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SUPREME COURT, U.S.

CASE NO. 81-6710

IN THE SUPREME COURT OF THE UNITED STATES

Spring Term, 1982

KEN L. MICHAELIS,

Appellant,

-vs-

NEBRASKA STATE BAR ASSOCIATION;
State of Nebraska Ex Rel. NEBRASKA
STATE BAR ASSOCIATION,

Appellee.

ON APPEAL FROM THE SUPREME COURT
OF NEBRASKA

JURISDICTIONAL STATEMENT

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IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

KEN LEE MICHAELIS, Appellant,	)	Case No. _____
vs.	)	JURISDICTIONAL STATEMENT
NEBRASKA STATE BAR ASSOCIATION, also stated as State of Nebraska Ex Rel. NEBRASKA STATE BAR ASSOCIATION, Appellee/Respondent.)	)	

Pursuant to Rule 15 and Rule 46, if allowed, of this Court, Appellant does hereby file the following jurisdictional statement:

I. (a) QUESTIONS PRESENTED BY THIS APPEAL/WRIT OF CERTIORARI:

1. Were there massive violations of appellant's constitutional rights and freedoms of free speech, free expression, freedom of personal conscience, freedom of ideas, freedom of thought, and free press undertaken by the segment controlling the Nebraska State Bar Association (NSBA), the Nebraska Supreme Court, and a group of certain lawyers in Nebraska throughout this ordeal - beginning in 1978, continuing to this date, and culminating in the opinion delivered by the Nebraska Supreme Court?

2. Is and was there a trail of intrigue, even conspiracy, on the part of certain Nebraska lawyers aiming to destroy the appellant and appellant's constitutional freedoms, personal freedoms, livelihood, property rights, and personal decency and self respect?

3. Is there ever the possibility of an occupational bias on the part of judges as occupational lawyers and did the Nebraska Supreme Court demonstrate a clear and present occupational bias?

4. Is there ever a clear and present danger to our republic and to the Constitution of the United States among lawyers and the unelected lawyer-judges that demands this Court to erect the strictest of constitutional safeguards and constitutional standards inorder to preserve the republic, the American democracy and way of the public being sovereign as envisioned by Jefferson and Madison, and to prevent class, caste, and occupational privileges, double standards, and the reincarnation of feudal cartels and another dark age?

5. Was the action by the Counsel for Discipline of the NSBA, Stanley Gushard (fired by the Nebraska Supreme Court amidst this controversy in about 1980), by James Egley (a known perjurer by actual court documents and transcripts), and by Kenneth Olds (bordered on perjury August 16, 1978) A. On May 10, 1978, the day after the Nebraska Primary Election - were their acts and actions matters of intimidation, coercion, and unconstitutional invasions of personal privacy, free speech, free thought, decency, truth, and free knowledge?

B. At the August 16, 1978 hearing before the Honorable Nebraska District Judge Patrick Lynch did perjury occur on the part of lawyers James Egley and Kenneth Olds?

C. Was the allegation of "mental illness" against a particular candidate who headed the Primary Election for County Attorney by unsolicited write-in votes an act of corruption and scandal against the most hallowed and treasured of all franchises - voting? In light of the fact absolutely "No Evidence" existed in the least of any "mental illness"? Was this malicious evil designed to destroy the appellant in the summer of 1978 as a practicing lawyer? As a political candidate for Cuming County Attorney as had happened merely three months prior? Was this blatantly abusive and malicious prosecution? Was the Nebraska Supreme Court in any way blameworthy?

D. Did the so-called Committee on Inquiry of the Nebraska Ninth Judicial District (This system of Inquisition has also been abolished by the Nebraska Supreme Court in 1980; undoubtedly due to criticism from this case) have a predetermined goal and objective to silence the appellant herein? Thereby serve the desires and needs of lawyers Moodies, Thor, and Hurt and other Nebraska lawyers whose backgrounds of greed, intrigue, and incompetence cannot and would not be able to sustain a proper investigation into their past dealings? Would some of the gross criminality and massive conflicts of interest put some of these lawyers into Nebraska prisons?

E. Is it possible that some of the Justices, if not all, on the Nebraska Supreme Court have matters in their past as lawyers and judges that they desire to hide such as occurred a few years ago on the Oklahoma Supreme Court as resignations for bribery occurred?

6. Were the formal charges against the appellant ever made definite and certain to meet the necessary constitutional standards as demanded by appellant at least ten times throughout this ordeal?

7. Was there unconstitutional ambiguity and vagueness that allowed for capricious, arbitrary, and malicious activity by the Nebraska Bar Association? By the Nebraska Supreme Court? By the small clique of Nebraska lawyers controlling and deeply involved in this intrigue for political and personal reasons of self-preservation by coverup of the truth?

8. WHAT DID THE APPELLANT DO THAT VIOLATED THE FOLLOWING:

A. DR 1-102 (a): A lawyer shall not (1) violate a Disciplinary Rule? That really begs a host of questions to the enlightened! (4) What did appellant do that was "conduct involving dishonesty, fraud, deceit, or misrepresentation"? Is this just like Hitler Germany - attribute your own faults to the opposition inorder to destroy those who are decent, truthful, and proper? What is the specific charge? The specific proof? Where is the specific burden of proof? Is not all of these acts of gross misconduct far more applicable to the actions of the six Nebraska Supreme Court justices and the eight Nebraska lawyers that carried out this dastard and heinous program of concocted evil?

(5) What exact conduct on the part of appellant is and was prejudicial to the administration of justice? This begs many questions such as does justice really exist in present day Nebraska courts? Can the truth ever be prejudicial?

(6) What specific conduct adversely reflects on appellant's fitness to practice law? Other than the Nebraska Court's desire to silence appellant and all other free thinking Nebraska lawyers? What is the truth about everything throughout these matters?

B. DR 1-103 (A) What unprivileged knowledge did appellant possess? Is this the old scatter gun approach? To whom does appellant report said knowledge when appellant knew by common sense and fact perceived for years as most Nebraska lawyers do that the system of discipline is a farce and a coverup to intimidate honest and truthful lawyers while protecting the powerful, wealthy, and so-called "prestigious" lawyers? Does the appellant report the

knowlege or what others have told him to an already corrupted or distrusted Stanley Gushard or the Committee on Inquiry that could resort to such surreptitious and criminal acts of falsely and knowingly with malice and recklessness alleging the appellant was mentally ill without the least semblance of evidence or proof to sustain such a ridiculously evil conclusion? The heinous act of Soviet Russia - to falsely label opposition as "mentally ill" thereby obtaining the illegal and evil objectives of suspension as a lawyer and the unavailability of appellant to be elected by the voters as their desired Cuming County Attorney! Was this a plan to ruin the voting franchise of the appellant's peers who wanted him as County Attorney?

C. DR 2-101 (A) What public communication contained "a false, fraudulent, misleading, deceptive, self-laudatory or unfair statement or claim"? What was the specific falsehood, etc.?

What is the proof? Who had the burden of so proving?

Was any such statement made in a political campiagn or in the course of political discussion? What, for God's sake, is the truth?

D. DR 8-102 (B) What known false accusations against a judge occurred? What is the actual and factual truth? Who had the burden of proof as to the falsehood? What are the detailed specifics?

9. What are the correct constitutional standards to apply to each and every of the prior stated questions?

10. Is the case against the appellant the classical scatter-gun approach? Shoot at appellant with anything and everything; thereby somehow the NSBA would be able to destroy the appellant without any regard to truthfulness, decency, human propriety, veracity, ethics, law, or morality.

11. Was this the classical case of concocting false charges based upon half truths and ambiguities?

12. Was this the classical exploitation by a small clique of Nebraska lawyers who knew that constant pursuit against the appellant by controlling the Nebraska media would destroy the appellant and his good-will among the Nebraska people who he so dearly identifies with? No matter what the outcome of what they planned?

13. Did not the Nebraska Bar Association and now the Nebraska Supreme Court that has brought reproach, discredit, and disregard and disrespect upon justice, upon all other courts in the United States?

14. Did the referee hand-picked by the Court conclude as the NSBA and the Nebraska Supreme Court desired him to or as he perceived them to so desire?

15. Should the appellant rightfully ever express regret for being truthful, honest, decent, and too forebearing of evil corruption directed against himself, his wife, his tenderly young children, and their livelihoods and respectful living? When has it became fashionable and proper to apologize for the truth? Especially the truth as "entrapped" by this evil clique and the NSBA?

16. Does appellant "need reformation"? What about truthfullness?

17. Did the Nebraska Supreme Court deliberately deceive and misrepresent the truth by stating in their opinion (210 Neb. 547) that "Respondent has filed exceptions to the report of the referee and the matter has now been argued before this Court"? Did not respondent/appellant refuse to file exceptions fearing what the Nebraska Supreme Court would attempt to do? Did not the Nebraska Supreme Court on its own motion dated June 3, 1981 ordered that this matter be argued by briefs and orally? Is this typical corruption on the part of the Nebraska Supreme Court? Was this stated merely to control public opinion even moreso? Is the Nebraska Court tainted?

18. Is not the penalty of permanent disbarment by a lawyer for mere free speech (thus destroying his livelihood and his families' livelihood as had occurred the past four years) an absolute criminal punishment that must meet the applicable standards of criminal proof?

19. Is this an attempt by so-called "public servants" - judges - to gain for themselves an unconstitutional position of privilege and being above criticism and the truth? Why no mention of the sovereign public who has the right to know about the Courts, the Bar Association, and about lawyers acting as City Attorney and County Attorney?

Is this tyranny? Despotism? Is this fraught with evil risks?

20. May appellant comment or answer inqueries made by the media concerning activities done against the appellant and his family?

21. Did the Nebraska Supreme Court really read the entire record?

22. Did the court-appointed Referee Asche state at the June 30, 1980 hearing that the only evidence that can be considered is that presented before him on that date or hearing?

23. Did the appellant ever place anything for broadcast by radio as did the Nebraska Bar and the Nebraska Supreme Court?

24. In a democracy such as ours can public and government officials, especially unelected judges, ever demand blind respect from anyone?

25. What government officials are ever "wholly free to defend themselves" in a democracy? This is even impossible in a totalitarian society! Only God, not even Hitler, is totally free to defend himself!

26. When did appellant, if ever, state that his own statements were campaign rhetoric?

27. Did the Nebraska Supreme Court really rely upon the majority case law formulated by other jurisdictions? Or was it merely Iowa, South Dakota, and Kentucky? What about the prestigious states of New York, New Jersey, Wisconsin, California, Minnesota, Colorado, etc.?

28. Did the Nebraska Supreme Court even come close to stating the law and the truth about the United States Supreme Court case In Re Sawyer, 360 U.S. 622, (1959)? Was Justice Stewart actually speaking for five members of the Court? Why could not the other four speak for themselves or even joined in his opinion? What was the actual statement and basis for Justice Stewart's concurring opinion?

29. Can a constitutional right be abused by the person considered to possess the right? Then he does not possess the right!

30. Are the Cannons of Ethics the supreme law of our land? Is it even law? Or mere standards? Can the Cannons of Ethics ever overrule, replace, or superscede the Constitution of the United States?

31. What was specifically false regarding statements made by appellant in reference to lawyers Moodies and Thor?

32. What proof exists on the part of the Nebraska Supreme Court that appellant "filed" two documents with the Court on January 14, 1982? Was there any service? Is this court acting facetiously, childishly, with gross recklessness, arbitrary, capricious, etc.?

Is this a correct basis to destroy appellant, his livelihood, his children, and the livelihood of his family? IS NOT THIS THE HALLMARK OF TYRANNY AND TOTALITARIANISM BY A PROVINCIAL COURT?

II. PARTIES TO THIS PROCEEDING ARE SET FORTH IN THE CAPTION.

III. TABLE OF CONTENTS and TABLE OF AUTHORITIES:

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APPENDIX: Copy of Nebraska Supreme Court opinion in Nebraska State Bar Association, Relator vs. Kenneth Lee Michaelis, Respondent; 210 Neb. 545.

NOTICE OF APPEAL DATED MAY 11, 1982.

NOTICE OF APPEAL AND MOTIONS FILED MARCH 12, 1982.

IV. GROUNDS ON WHICH THE JURISDICTION OF THE UNITED STATES SUPREME COURT ARE INVOKED:

Action of disbarment by the Supreme Court of the State of Nebraska based upon speech and communications made by the appellant to the press, the media, and to the public.

Apparently the Judgment of Disbarment as a Nebraska lawyer by the Nebraska Supreme Court occurred on February 12, 1982.

Appellant did not receive any proper legal Notice or service, not even a courtesy Notice, from the Nebraska Supreme Court that the Judgment of Disbarment occurred on or after February 12, 1982. This has not been received even to this date!

On February 12, 1982, the Nebraska Supreme Court and/or the Nebraska Bar Association caused and did deliberately cause the Nebraska news media, the Associated Press, and the United Press International news services, including statewide television and radio to announce that the Nebraska Supreme Court had disbarred lawyer Ken L. Michaelis for various statements he had made of a political and governmental nature in excercising his constitutional rights of free speech and free expression.

On said Friday, February 12, 1982, appellant travelled the 75 miles from his West Point, Nebraska home with his wife and two young sons to Omaha to visit his then long-dying mother in an Omaha hospital. Appellant's mother, Sylvia Michaelis, died March 23, 1982 amidst all of this tortured, evil controversy!

In order to find out what was being broadcasted on that Friday, February 12, appellant finally asked for and obtained a copy of an alleged opinion by the Nebraska Supreme Court from the Omaha World Herald, Nebraska's largest daily newspaper. Said newspaper, through their reporter, was shocked that at this late stage already the Nebraska Supreme Court had not given any proper legal Notice or even any courtesy to the appellant!

Constitutional First Amendment rights of political free speech, free expression, free thinking, freedom of conscience, freedom of beliefs, and free press is the paramount grounds in this case for appeal and/or Certiorari.

Blatant and massive violations of the First, Fifth, Seventh, and

Fourteenth Amendments to the Constitution of the United States and the applicable comparable sections of the Constitution of the State of Nebraska occurred herein and is the basis for this Court's jurisdiction. The Nebraska Supreme Court is the highest State Court in Nebraska.

Appellant did personally deliver to the Nebraska Attorney General a "NOTICE OF APPEAL AND WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT" on March 12, 1982. Thereafter appellant personally filed the Original of said Notice of Appeal and Writ along with the "NOTICE OF HEARING AND PROOF OF SERVICE" on March 12th with the Nebraska Supreme Court. (See Exhibit "1")

On this date, May 11, 1982, Appellant filed another Notice of Appeal with the Nebraska Supreme Court and served a proper copy upon the Nebraska Bar Association by mailing the copy to the Nebraska Attorney General. (See Exhibit "B")

This is a constitutional free speech, free expression case that entails the most basic and fundamental constitutional freedoms to any and all democracies!

V. APPLICABLE CONSTITUTIONAL PROVISIONS: First, Fifth, Seventh, and Fourteenth Amendments to the Constitution of the United States.

VI. STATEMENT OF THE CASE:

In 1976 the appellant, lawyer Ken L. Michaelis, and his wife desired to build a new law office building in a very advantageous location close to the Cuming County Courthouse in appellant's hometown of his birth and rearing, West Point, Nebraska. The West Point City Attorney, Pliny Moodie, exploited his position as City Attorney.

Lawyer Moodie publically voiced his total opposition to the City Council granting lawyer Michaelis a building permit. This was a blatant conflict of interest! Over a period of the next six months Moodie used his position as City Attorney to cause the taxpayer's of West Point to hire lawyer John Thor, Jr. of Wisner and Larry Welch of Omaha to assist Moodies in obstructing and preventing lawyer Michaelis from obtaining a proper building permit.

Appellant and his wife had to spend, thus waste, thousands of dollars and many energies fighting this corruption by Moodies in local

government. Appellant and his wife were nearly forced to abandon their proposed project due to the horrendous obstructions and tactics used by their opposition at city taxpayers' expense.

After much controversy and conflict over many months, appellant and his wife finally succeeded in late 1977 to obtain the desired building permit. Appellant was forced to take the facts to the people of West Point via various means. Only after appellant exposed what was occurring did he finally obtain the building permit! However, by then interest rates on borrowed money had climbed drastically.

In December, 1977, the incumbent County Attorney for Cuming County, Nebraska, the same John Thor, Jr. Moodies caused to be hired by the City of West Point to obstruct and prevent appellant's building permit, requested or demanded that the Cuming County Board of Supervisors raise the salary of the part-time job of County Attorney an unbelievable 80% - from $10,000 to $18,000. In 1973 the part-time job only paid $6,000. In four years time the salary was tripled!

Cuming County, Nebraska has less than 12,000 people. The job of County Attorney was and is a part-time job by state statute for counties with so little population and no great legal problems! Various other benefits such as secretarial and supplies were furnished also. Besides, Thor charged the County mileage to and from the Courthouse.

After lawyer Thor obtained the 80% salary increase a storm of county-wide protest erupted after the regional newspapers realized that the raises in salaries granted to Cuming County officials were by far excessive in comparison to other Nebraska counties! The two local weekly newspapers chose to coverup the great heist in salaries until public clamor forced the two newspapers to report it!

Amidst this atmosphere of citizen, taxpayer, and voter's disgust and indignation, the appellant was finally persuaded by many county voters to file for the office of Cuming County Attorney.

The incumbent Thor had filed in early January, 1978 for re-election as the Democrat Party nomination. Appellant filed about February 27, 1978, for the Democrat Party nomination also.

Shortly after filing for the Primary Election, appellant was asked and stated that he perceived that some of the 80% salary increase was comparable to unethical gain by the incumbent Thor exploiting the

timidity of the seven member board - all farmers! Appellant stated that no inflation factor justified such a raid upon the County treasury and that Thor's actions were the very essence of Inflation and greed itself!

Appellant stated he did not like the process of cajolery and misrepresentation used by Thor with the County Board to coerce the Board into gaining what he expected an 80% salary increase for himself.

Appellant then stated he could not in clear conscience nor by proper ethics accept the full 80% salary increase. Appellant stated he would not accept the "unfair" portion of the 80% salary increase!

Much of this case is nearly identical in facts and is comparable to the recently decided case in the United States Supreme Court Brown v. Hartlage, Case No. 80-1285, decided April 5, 1982. 50 L.W. 4359 to 4364.

By April 1, 1978, it was perceived by nearly everyone who commented in Cuming County that John Thor was so much disliked for his past dealings that Ken Michaelis, appellant herein, would easily win the Democrat Party Nomination away from Thor in the May 9, 1978, Primary Election. In early March, 1978, lawyers Moodies and Hurt of neighboring town Scribner announced their support of Thor for re-election.

Appellant had worked for six months with Hurt in 1974 and quickly severed all ties with this very unethical lawyer of no scruples at all.

Moodies' and Hurt's endorsement of Thor merely bolstered the Michaelis candidacy. The county voters perceived that these types of lawyers were sticking together - opposing appellant Michaelis; therefore, Michaelis was at least not in collusion with them shysters!

However, Moodies, Thor, and Hurt met several times to plan strategy! This began in early March, 1978. Failing to stop the voter disdain of Thor by massive newspaper advertising, this group then decided they had to take the law into their own hands to prevent the appellant from being elected County Attorney!

Incumbent Thor, at the behest and in consultation with lawyers Pliny Moodie and Robert D. Moodie, Thor's campaign chairman, requested or cajoled the county board to enter into a secret, thus illegal, executive session on or about April 3rd and 4th (several times), 1978. The secret executive session was for the expressed purpose of Thor's political gimmickery along with Moodies.

Thor and Moodies' political gimmickery had the objective of preventing the voters, the sovereign, of being able to elect the appellant or to nominate the appellant for County Attorney in the May 9th Primary Election. Thor, in the illegal executive session, recommended that the County Board appoint a Special Acting County Attorney to investigate the appellant only and to remove his name from the Primary Ballot. Thus preventing the inevitable nomination by the voters of the appellant. The appellant was given no notice of what was going on or transpiring. It occurred over a two day period.

Thor and Moodies handpicked their choice as the Special Acting County Attorney at taxpayer's expense to do what they politically deemed necessary to salvage their many years of documented corruption in city, school board, and county affairs! The timid County Board suspected something was wrong and that they were being used. Three of the seven board members finally voted against Thor's recommended lawyer, Richard Garden of Norfolk, Nebraska.

Appellant first learned of all that had occurred the prior three days after it appeared in the weekly West Point News. The paper stated that appellant's name would probably be removed from the Primary ballot for Michaelis having stated he, by conscience, could not accept the full 80% salary increase. Thor, Moodies, the County Clerk, Garden, the West Point News, and the Wisner Chronicle, all caught amidst total ignorance, graft, corruption, self-dealing, conflicts of interest, spread it all over Cuming County and Northeast Nebraska that appellant was thereby bribing each and every voter of Cuming County! How absurd since nothing was on the sly! See Brown v. Hartlage for correct constitutional and voting practices law! This was a massive insult to the intelligence of the average voter!

The secret "executive session" clearly violated Nebraska's Open Meetings laws. Not a thing was done - not even by the rags of "yellow journalism" that should fight closed door and secret meetings!

Again at taxpayer's expense and by exploiting power and caprice, Moodies and Thor did an evil and dirty thing to every voter, taxpayer, and citizen of Cuming County. They get away with this by controlling the local weekly newspapers. This is a small town of 3,500 people!

In this episode Thor and Moodies' chosen and special attorney, again hired at taxpayer's expense to do Moodie and Thor's "dirty" work, was Richard Garden. Garden completely ignored appellant's strong claims and strong arguments that everything appellant stated was constitutionally protected free speech, free expression, free conscience, and free beliefs. Appellant, Ken Michaelis, told this Moodie puppet and stooge that it was absolutely absurd to claim appellant's refusal to accept the greedy and "unfair" portion of the salary increase as bribery! Appellant pointed out the very definition of bribery refutes the silly nonsense that Garden was creating to serve the interests of those who got him hired to do this job!

Lawyer Garden stated that "the constitution of the United States has nothing to do with bribery!" Appellant could not believe the level of this moron's intelligence. Typical lawyer - Nebraska lawyer and Nebraska judge's - incompetence, negligence, stupidity, ignorance, and reckless disregard for truth, law, history, and ethics!

Nebraska law also states that even if a candidate dies after the official ballots have been printed the ballots cannot be reprinted! The ballots are to be printed and officially published 40 days prior to the applicable election!

These schemers of intrigue, corruption, greed, and caprice totally disregarded the applicable Nebraska State Statutes dealing with elections. Serving Moodies and Thor's personal interests and desires, Garden directed the County Clerk (she was in collusion with this group from day one anyway) to strike appellant's name from the ballot based upon the conspirator's declaration of "bribery" of the voters. Garden did not even have a plausible statute such as Kentucky's in Brown v. Hartlage, supra. Garden, Moodies, and Thor had absolutely nothing in the law to assist them in taking this despotic act of striking the appellant's name from the Primary ballot. This all occurred within thirty (30) days of the May 9, 1978 Nebraska Primary Election.

The reprinting of the ballots occurred within 24 days of the election. Appellant considered the possibility of a Writ of Mandamus and other legal action. However, the appellant had seen and had been exposed to far too much politics, arbitrary favoritism, and caprice on the part of Nebraska District judges to expect any proper judicial remedy! Some voters suggested the very remedy that

constitutes the raison d' etre of every court's existence -"shoot those crooked bastards Moodies and Thor"! Nebraska's courts and legal profession have been failing Nebraskans for years! Thus the courts in Nebraska have very little utility for society and less validity for their existence. The courts should have existed to stop Moodies and Thor - not to encourage, condone, and supplement their activity! In any event the cost to go to court was too exorbitant and too risky given the "Moodie influence", etc.

The two weekly newspapers were told by appellant that the acts of Garden, Moodies, and Thor were blatantly unconstitutional and that it was illegal under Nebraska law to reprint the ballots. Appellant even gave each newspaper a copy of the relevant statutes. In hock to Moodie influence, the local weak press reported only the scandalous lies and intrigue of the conspirators (NOT LABELLED THIS UNTIL HEREIN FOR IT HAS TO BE AN ACCURATE LABEL FOR WHAT OCCURRED).

Appellant, a true believer in Jeffersonian democracy, free speech, free press, etc. stood in utter disbelief.

Despite all of the biased and prejudicial reporting against the appellant, despite all of the one-sided "yellow journalism" employed by the local newspapers and Thor, Moodies, and Garden and the County Clerk against the appellant, the average voter of Cuming County apparently saw through this one-sided condemnation of appellant and one-sided reporting.

Appellant did not even have the least bit of a campaign. Appellant solicited no votes and did not ever mention a write-in of his name for County Attorney! However, at the May 9th, 1978 Primary, appellant's very hard to master and to spell last name (alongwith his first name) was written-in by twice the number of voters than those who voted with a mere "X" for the only name then allowed on the ballot.

At the May 9th Primary, the people who knew the appellant best on an everyday basis gave appellant an overwhelming endorsement. Thor was overwhelmingly rejected by the power of the voter's affirmative action to sustain justice, truth, and democracy as opposed to tyranny, graft, greed, and corruption!

A long, drawn-out game of political and legal gobbledygook ensued the May 9, 1978 Primary Election. County Clerk Lucille Toelle, Moodies, Thor, the Nebraska Attorney General, and Garden carried out

an unbelievable attempt to ignore - not to count at least 600 of the write-in votes for the appellant based upon their own capricious and arbitrary whims. They had absolutely no basis in law or fact!

Appellant had received about 927 write-in votes without any solicitation of write-in votes. Thor, the only name on the ballot, only received about 400 votes. Some voters tore up their ballots to show their disgust over the politics, scheming, and illegal activities of the various county officials and Moodies - now being assisted by Garden at county taxpayer's expense.

Sensing that attorney Michaelis's appeal with the voters was genuine and could constitute a permanent threat to Moodie's power base in Cuming County, both Moodies and Thor caused the commencement of activities within the Nebraska Bar Association already in mid-April directed at the destruction of Ken Michaelis, appellant herein!

Moodies met with at least Kenneth Olds of the Ninth Judicial District's Committee on Inquiry. These multimple lawyers of evil taint and evil ambitions and greed ganged up on one single young lawyer who had the courage and determination to be truthful - the appellant. These lawyers did so in conspiratorial fashion. They met and they discussed and they planned their strategy to stop the appellant from ever being elected and to be even destroyed by exploiting words, language, ambiguities, the media, and distorting the truth! The good and honorable lawyers in Nebraska lacked the courage and the audacity to step forward and publically and legally support the appellant! Appellant was alone with his young wife to fight this consortium of tyranny on the many fronts they wantonly with evil motives pursued. Appellant refused to get down to their level of corruption!

This is no different than the weak in 1935 Germany allowing the blind to control and thus eventually destroy Germany under Hitler.

The day after the May 9th Primary election, the very day the election results became known concerning the nearly "miraculous" grass-roots write-in votes for the appellant, three Nebraska lawyers in Gestapo fashion knocked on the door to appellant's residence.

Olds and Egley on the Committee of Inquisition and Gushard, the then Counsel for Discipline for the Bar Association, in Hitler-like fashion demanded two reporters then interviewing the appellant leave

appellant's and his wife's very own residence!

The two reporters finally agreed to leave after appellant realized that these three self-anointed false gods of evil, scheming corruption were going to use the Nebraska Bar Association against the appellant unless appellant request the two reporters to depart!

The three self-anointed "Gestapo-like agents" demanded appellant answer various questions they wanted to present to him. It was easy to determine that these jackasses were doing just the same thing as the Spanish Inquisition did in presenting inquires, or as SS Storm troopers did in Germany or as the Soviet KGB!

Appellant promptly concluded that this was another Moodie and Thor concocted gimmick to silence and to destroy the appellant via institutionalized corruption! Lawyer Olds even stated he had just came from Moodies' law office in downtown West Point. Moodies will continue to get away with such graft and corruption so long as the news media covers up for them - keeps all the relevant truths about Moodies out of print!

In December, 1977, County Clerk Lucille Toelle (my mother's first cousin prior to my mother's death on March 23, 1982) had also maneuvered an 80% salary increase for herself from the Cuming County Board after Thor had set the pace by first requesting and obtaining such a massive salary increase. Working together for their mutual interests, Thor and the County Clerk worked together to destroy those in opposition to the other politically or otherwise!

The County Clerk did everything imaginable, including illegal corruption such as reprinting the ballots at taxpayers double costs, to assist Thor. After Appellant received 927 write-in votes to Thor's actual 400 or so votes, the County Clerk issued Thor the Certificate of Nomination for County Attorney for the Democrat Party.

A month later amidst an upheaval of continuing controversy of her trying to void over 600 write-in votes for the appellant (all of which were properly done in accordance with the applicable statutes), County Clerk Lucille Toelle issued the appellant, a registered Democrat, the Republican Party's nomination for Cuming County Attorney.

The appellant gladly accepted the Republican Party's nomination! Appellant considered the grass-roots Republicans in Nebraska as very honorable and good, basic Americans.

Apparently the Nebraska Attorney General's office and some of their other political cronies decided that the irate voters in Cuming County had to be quieted. They achieved this gimmick by a very assinine recommendation that the County Clerk issue the appellant the Certificate of Nomination for the Republican Party!

Now the appellant was forced back onto the ballot for the Nebraska General Election in November, 1978. Moodies, Thor, and their clique of lawyers decided they had to act to destroy appellant prior to the General Election! Amidst their many considered tactics they chose the same scheme employed by Soviet Russia and Hitler Germany to silence and to destroy one's enemies - false claims of "mental illness".

On June 26, 1978, the Lincoln Star and Journal newspaper ran an interview with appellant concerning the chaotic mess in Cuming County. The newspaper had tried to interview Pliny Moodie and Robert D. Moodie as well to determine what they had to say about the specifics concerning Moodies vast conflicts of interest over the years!

Moodies refused to be interviewed. Instead, Moodies, Gushard, and the fictional Committee on Inquiry met to plan final strategy to destroy the appellant. The group met several times in Lincoln in early July, 1978. Appellant even accidentally walked into one of their meetings in a secluded room at the law school!

By the frequency of their meetings, the stealth fashion they held their meetings, and by their guilty complexes when they met the appellant, the appellant knew that these schemers next action was going to be drastic. The question is and was: Why did they think they had to do anything? The appellant left them alone so why did not they let the appellant alone? THEY HAD SOMETHING TO HIDE AND TO PROTECT - their past history of conflicts and corruption!

In early July, 1978, appellant's wife stated she feared that Moodies and Thor would hire a paid killer to destroy myself. There were adequate reasons and basis for such fears. However, threats on appellant's life were not to occur until October, 1980!

About July 14, 1978, appellant's suspicions were confirmed. Moodies, Thor, Gushard, Olds, and Egley caused the Nebraska Supreme Court to file and to notify Ken Michaelis, appellant and lawyer herein, that he was being charged with being mentally ill!

Lawyers Olds, Egley, and Gushard who did not even know the appellant had caused to be filed in the Nebraska Supreme Court an "APPLICATION FOR IMMEDIATE TEMPORARY SUSPENSION OF KENNETH LEE MICHAELIS, A MEMBER OF THE NEBRASKA STATE BAR ASSOCIATION". The basis of such suspension was stated that Ken Michaelis was "mentally ill". Imagine, such a drastic conclusion and label by silly idiots who did not have the least training in psychology and did not have the least acquaintance with the appellant. It was obvious that these criminally corrupt schemers decided they had to get Michaelis suspended as a lawyer inorder to get him off the ballot in November as they had done for the May Primary election. They chose the only method they could under the Rules - and they decided they could get away with such a wicked and evil and heinous a scheme! And to no credit to any Nebraska court, judge, or lawyer - they did! Today, these evil schemers are not in prison! Instead they enjoy blatant corruption and greed!

These evil Nebraska lawyers at the behest and concurrence of the Nebraska Supreme Court carry out a most evil scheme that only Soviet Russia today employs besides the Nebraska Bar Association and the Nebraska Supreme Court! Silencing and discrediting and ruining free thinkers and Russian dissidents!

A hearing was held with the most absurd and ridiculous evidence given by Olds, Gushard, Egley, and Hurt while Moodies and Thor remained on the outside in the Omaha Courtroom. Pliny Moodie hid in the toilet in the Douglas County Courthouse so he would not be noticed after he had travelled over 75 miles to Omaha for the hearing. Appellant's mother, taking care of appellant's infant son, noticed Pliny Moodie ducking into the toilet so he would not be noticed!

Appellant upon being told by his mother that Moodie was hiding in the toilet went into the toilet to embarrass the red-faced jackass!

Since the evil schemers had absolutely no relevant evidence or even material evidence to support their corrupt allegation of appellant being "mentally ill" their gimmick failed! Or did it? What was their purpose? They were all lawyers - were they that dumb?

The media remained completely managed, controlled, bribed, and a puppet of Moodies and Thor (A longer story exists on this but too detailed to elaborate here). Controlled and selected news reporting continues today in Cuming County and West Point!

In the May 10th, 1978, encounter lawyer Olds told appellant

that constitutional free speech has nothing to do with lawyers! That stupid statement and gross ignorance of the supreme law of our land alone whould be grounds of disbarring such a poor mentality!

Gushard said that lawyers can never tell the public what lawyers are doing! Gushard said the public should not be made aware of what lawyers are doing wrong!

Despite all of these evil gimmicks by Moodies and their scandal-ridden chorts, especially the "mental illness" tactics, by October, 1978 it was apparent to most observers that the appellant would be again overwhelmingly elected as Cuming County Attorney. Another county lawyer decided to exploit all the newspaper "yellow reporting" that he perceived was damaging the appellant with the voters. This attorney, John Feller, undertook a massive petition drive in July and August, 1978 and got his name on the ballot for Cuming County Attorney also.

A third candidate besides appellant came forth with an extensive write-in campaign. The voters had four lawyers to choose from in the November General Election for their Cuming County Attorney!

Still most observers perceived that the appellant would win the November election! Moodies feared this occurring. They could not allow Michaelis to become County Attorney for fear appellant would investigate into Moodies known past corruption as City Attorney, attorney for the West Point school board, etc.

About October 24th, 1978, two weeks or less before the November General Election, appellant was again served a Notice by the so-called Committee on Inquiry - the same group of four lawyers that merely three months prior tried to have appellant suspended as a lawyer by 100% fraudulent and concocted charges of "mental illness".

Appellant had alrady made up his mind that these were not lawyers - they were known criminals! They, in the words of Truman, were "pure jackasses"! This committee of criminals carried out a most ridiculous pretension of being part of a hearing on November 14, 1978, a mere one week after the appellant again won an election - this time the General Election as Cuming County Attorney.

This committee of criminals violated the supreme laws of our land and trampled upon the appellant's constitutional rights, civil liberties, livelihood, property rights, etc. - anything to destroy the appellant and to prevent appellant from becoming the damn-good County Attorney the voters expected him to become!

The aim of this corrupt committee was to get appellant disbarred. In Nebraska that is not hard at all if you do not play their game! Lawyers have even been caught selling dope in Nebraska and were not disbarred. Various lawyers have done about the most corrupt things against the interests of their clients and these were covered up by the Nebraska Bar Association and the Nebraska Supreme Court. That is why the Nebraska Supreme Court cannot have lawyers telling the sovereign public the truth about Nebraska lawyers and judges!

The incumbent county attorney John Thor, Jr. had spent over $3,000 in newspaper advertising alone to get elected. The petition candidate John Feller spent another $1,000 or more dollars.

The appellant only spent $132.00 dollars and got elected!

As the incumbent, Thor was overwhelmingly rejected by over 70% of the voters who travelled to the polls.

The two county weekly newspapers, recipients of more than $3,000 of the Thor advertising money, etc. tried to ignore and downplay the Michaelis victory in the November General Election. They employed the typical tactics of "yellow journalism", yellow reporting, and derogatory editorials. They apparently felt secure that the power would remain with Moodies!

After Michaelis's stunning victory at the polls, Moodies and Thor became desperate. They had to stop Michaelis before he took over as Cuming County Attorney in January, 1979. They feared Ken Michaelis would investigate their many shady and apparently very corrupt dealings. Rumors and many factual statements were abundant for years in West Point of corruption with detailed and specific facts known and knowledgeable to various residents and citizenry who wanted reform. Former mayors, coucil members, and school board members told appellant of specific matters of Moodie corruption that occurred!

The Moodie clique pursued a two-pronged attack upon the appellant after appellant's election. Moodies, themselves, probably feared discovery of matters that would send both of them to prison.

The four lawyers with the Nebraska Bar Association - the same four lawyers who tried to get Ken Michaelis suspended a mere three months prior on the ridiculous charge of "mental illness" - held harrassing and intimidating hearings designed to "get" and to destroy the appellant. Their goal was obvious. They cared nothing about

about a document they probably knew absolutely nothing about - the treasured Constitution of the United States, free speech, free beliefs, free ideas, free conscience, freedom of expression, and free press!

At the same time the clique involving Thor and Moodies hired still another lawyer, Thomas DeLay of Norfolk, to file a lawsuit to contest and set aside the appellant's November election as Cuming County Attorney based upon the appellant having allegedly "bribed" the voters with his statement of eight months earlier that appellant could not ethically with clear conscience accept the full 80% salary increase. The lawsuit was filed in the District Court of Cuming County.

Thor, Moodies, and now DeLay scandalized the lawsuit as filed with statements that would bring embarrassment upon the various churches in Cuming County! Appellant sensed that the too-often tradition amongst judges in his region to show extensive favoritism towards certain long-practicing lawyers such as Moodies or a concert of lawyers such as Moodies, Thor, and now DeLay was very much reality. Appellant Michaelis knew the Nebraska District Judge would decide this lawsuit completely contrary to the Constitution of the United States and the recent decision of this great Court in Brown v. Hartlage, supra. Even moreso, Michaelis knew the Nebraska Supreme Court would also rule against him forcing appellant to spend thousands of unavailable money to carry the matter to the nation's highest court.

In essence, Brown v. Hartlage, supra, did this for Michaelis. The Brown decision has never been reported in the controlled Nebraska media which for months stated in declarative form that Michaelis was guilty of "bribing" the voters in 1978. This was restated many times over the media and in the press during 1978, 1979, 1980, 1981, and now 1982! This was meant to ruin the appellant. The true law, Brown v. Hartlage, supra, has been given absolutely no coverage! Controlling minds and thoughts and beliefs by controlling the media!

To his credit, one of the District Judges removed himself from the election contest lawsuit. That left Judge Merritt Warren.

It was obvious from the outset that Judge Warren was going to do everything that Thor, Moodies, DeLay, and Garden desired. It would

be absolutely futile to argue "constitutional free speech, free conscience, and free expression". The logic of constitutional law and of Brown v. Hartlage, supra, is foreign to every Nebraska judge appellant has ever met; especially the Nebraska Supreme Court!

Thor, Moodies, and DeLay had years of combined involvement with Judge Warren. Appellant had very little!

Appellant assessed the total situation! He concluded that Judge Warren knew very little constitutional law and cared even less about constitutional law! Appellant knew the same applied to the Nebraska Supreme Court which degraded constitutional free speech, free expression, free thinking, and free press almost everytime it had the judicial opportunity!

Also, appellant knew that any trial on this election contest lawsuit would anger and embarrass the quiet and conservative Cuming Countians - especially clergy members who were going to be subpoenaed by the insensitive and very self-centered and selfish Thor, DeLay, and Moodies. Embarrassed clergyman would probably be forced into a political hassle and political trial of great controversy and conflict already for ten months. The whole conflict plainly embarrassed many Cuming Countians. This bothered appellant who loved and was affectionately devoted to his "home" county!

Appellant concluded that he could win this election contest lawsuit only after losing in the Nebraska courts and thereafter being forced to appeal to the great constitutional court of our land - the Supreme Court of the United States. The unbelievable financial costs and dreadful expenditures through this long process would bankrupt the appellant, his wife, and young children before it ever progressed into the federal court system.

Appellant concluded he could never do such a hardship upon his beloved wife and children! Moodies' concocted obstruction of the Michaelis building permit just the prior year, 1977, had wasted nearly all of the Michaelis savings account! Appellant and his wife were forced to borrow much money just to survive that ordeal.

Appellant knew his first loyalty had to be towards his wife and children, then the good of his county. He knew he could never fight this consortium alone on two fronts - two extensive battles with lawyers, the same group of lawyers, at the same time!

Appellant knew that both struggles were battles with tyranny and despotic attitudes by vested, greedy, and evil segments! He knew he had to deactivate one of these struggles. He also knew that he could only deactivate one of the struggles - the election contest lawsuit by refusing to accept the office of Cuming County Attorney as he was properly elected to serve by the voters of Cuming County. It was a matter of his family being financially destroyed (as Moodies, Thor, etc. knew). So despotism would win out in this case!

The Nebraska Bar Association's malicious actions were not within appellant's ability to control or to deactivate. It was mostly done surreptitiously behind appellant's back anyway! The Bar Association activities were in the control of a few evil-oriented, corrupt, malicious, or ignorant Nebraska lawyers and/or Nebraska judges.

For the sake of his wife, his young children, Cuming County and its many good citizens, churches, etc., appellant finally decided in mid-December, 1978, to refuse to accept the position he had been duly elected to serve. It was a coerced decision - decided because appellant could not see more suffering by his wife and children! Reason and common sense dictated this decision. Appellant merely hoped the County Board would have the courage to then appoint him as the County Attorney as the voters had determined!

Some forty days after the election this great insult to democracy, free elections, free speech, free expression, freedom of conscience, and freedom of beliefs occurred! What a travesty to the republic and its basic democratic foundations?

Appellant also thought and was told by friends that the clique controlled by Moodies would drop the Bar Association activities directed against appellant if appellant did not become County Attorney! Appellant merely hoped this would occur to protect his wife and children. Appellant was wrong. Moodies, Thor, etc. wanted not merely revenge for the Michaelis victories at the polls, they wanted Michaelis ruined as a lawyer! They feared appellant and his capacities or knowledge! They knew appellant had a conscience!

Thor unethically played politics with the Cuming County Board to get appointed to the position appellant had been elected to serve! Thor condemned lawyers Mel Murphy and John Feller directly to the County Board without any knowledge by attorney Murphy or attorney

Feller that this was occurring. Thor's direct statement to the county board was that both "Murphy and Feller are dumb as lawyers and should not even be considered to be appointed".

Meanwhile, Thor caused letters to be printed by so-called anonymous writers in both Cuming County newspapers that stated appellant was similar to the Reverand James Jones who had just caused over 900 deaths in Jonestown, South America.

Appellant considered it very unethical to do anything with the county board inorder to solicit the appointment as County Attorney - a full four year term! Attorneys Feller, Murphy, and Michaelis did nothing to obtain the position. Thor resorted to every unethical gimmick a Moodie would allow him to utilize. One of the old board members did everything imaginable to cajole and to assure Thor of obtaining the appointment. Board member Maack even had a host of pro-Thor people parade before the three new board members as well as the old board members.

By a 4 to 3 decision in early January, 1979, Thor finally got himself appointed to a position the voters had overwhelmingly rejected him and ejected him from twice before. Appellant, Michaelis, obtained the other three votes. Murphy and Feller obtained none!

A gigantic uproar and storm of county-wide protest erupted over the Thor Appointment even though the local newspapers tried to make it sound like this was the"proper" decision! The protesters lacked leadership for months but eventually they organized and successfully obtained the required numbers of petition signers to demand a special Recall Election of John Thor. As election commissioner, the County Clerk did everything to obstruct the recall election - including attempts to negate and void many names on the petitions presented to her. The county board was forced to hire and appoint an Acting County Attorney again. This time they refused to go into "executive session" and appoint whom Thor and Moodies desired.

David Domina, a very good, honest, and conscientious lawyer, was hired and appointed. County Clerk Lucille Toelle had taken 11 policy positions to negate over 300 petition signer's names. Attorney Domina, as Special Acting County Attorney, reversed her on every one of the eleven decisions she had made in her easily to perceive role of serving John Thor and Moodie's desires only! She came up with very

absurd and ridiculous interpretations of Nebraska laws dealing with Recall elections. John Thor even made copies of the filed petitions and personally went to petition signers to have them sign a statement that they wanted their names removed from the already filed Recall petitons. Attorney Domina found this to be improper!

Thor lost again by a 70% rejection in the speciall Recall Election held on July 3, 1979. John Feller has been Cuming County Attorney since that date. In the special Recall Election of Thor the voters lost again. This action with the Nebraska Bar Association prevented appellant from even considering the candidacy. Constant press reporting of a negative nature controlled by the Nebraska Bar Association were taking its toll on the minds of readers much as the "big lie" tactics of Goebbels and Hitler in Nazi Germany!

At all times herein, beginning April 5, 1978, appellant insisted that what lawyers Moodies, Thor, Garden, and the four lawyers presiding at the various schemes of the "Inquisition" were doing were massive violations of the Constitution of the United States and of Nebraska as well as Nebraska law!

Appellant specifically pointed out on June 14, 1978 in a response to an intimidating letter from the Counsel of Discipline, Stanley Gushard, that everything appellant has said or expressed is specifically protected by the Constitution of the United States.

Appellant stated this to the Bar Association continuously. To appellant's shock was the realization that many Nebraska lawyers and judges had never even heard the term of "political free speech"! These lawyers arbitrarily totally ignored appellant's constant reminder that what he was accused of violated the Fifth, First, Seventh, and 14th Amendments to the Constitution of the United States! Appellant reminded the Nebraska Supreme Court also several times including both of appellant's briefs, his pleadings, oral argument, etc. To no avail!

The Nebraska Supreme Court did not appoint a District Judge to be referee in this segment of the Bar Association's attack upon the appellant. Instead, they appointed an elderly lawyer of about eighty (80) years of age, Edward Asche. Mr. Asche told appellant personally that Asche had never taken a course in constitutional law and had passed law school by correspondence courses! The Nebraska Supreme Court apparently knew what it wanted

and how to obtain it by controlling the machinery and mechanisms! District Judge Patrick Lynch refused to be the lackey of the Nebraska Bar Association and the Nebraska Supreme Court - much to Judge Lynch's credit! Appellant only wished and wishes Judge Lynch would have condemned the Bar Association for doing what it did do in the heinous and dastard assault upon appellant's "sanity"!

Appellant believes the Nebraska Supreme Court did not care the least about the evidence concerning "mental illness" - the court wanted appellant chastized, silenced, and discredited at all costs! The Nebraska Supreme Court kept a close eye on the Cuming County Attorney election and they wanted appellant to lose - to possibly even be destroyed!

This is the result! (See Nebraska Supreme Court opinion with Judgment of Disbarment; Exhibit " " hereafter).

VII. STATEMENT AS TO SUBSTANTIAL CONSTITUTIONAL CASE REGARDING FUNDAMENTAL AND BASIC CONSTITUTIONAL FREEDOMS:

This is a most fundamental and basic constitutional free speech, free expression, and freedom of press case!

This case either allows ambiguous and unconstitutional double standards for lawyers and unconstitutional class systems and privileges for certain occupational groups - especially state judges - or it disallows the double standards, occupational privileges, and feudal caste and cartel systems.

A proper resolution of this case by this truly Supreme Court will give thousands of American lawyers their proper constitutionally endowed rights of free speech, free expression, and free thinking.

Lawyers' correlating duties to inform the sovereign citizen will become a reality concerning state courts just as it is the federal courts! If the United States Supreme Court can withstand all kinds of public scrutiny, criticism, even condemnation; certainly the Nebraska courts cannot demand blind and untruthful respect, or false allegiances or silence, intimidation, coercion, and tyranny!

By reversing this Nebraska Court's decision, this Court will have gained the respect of our founding fathers and the American people - for the Nebraska Court's decision is a direct violation of the Constitution of the United States!

The prior Jurisdictional Statement is hereby respectfully submitted to this Court.

KEN L. MICHAELIS, Appellant.

Ken L Michaelis

STATEMENT OF CIRCUMSTANCES:

My mother died on March 23, 1982, after a long and bitter struggle with leukemia. Her death caused great sorrow just as did her life in so many ways - especially after the Nebraska Bar Association started to assault, castigate, and condemn who was once her number "one" son.

My mother could not accept nor take what was occurring. Neither could my six siblings. It is a shame for my family was and is nearly destroyed by these acts. One of my brothers never even got through the ninth grade - and he relishes that I am being destroyed. This is a childhood hatred that he has had within him for years. I am the youngest of four sons.

The dying and death of my mother affected me greatly. I attempted to assist in her burial and with the burial costs. We had hardly any money to give towards her burial!

My parents had little formal education. I can understand how they thought when the Bar Association constantly obtained media useage to defame and condemn myself as a person, a human being, and a lawyer. The constant barrage of malice and hatred was abysmal.

Appellant has attempted to do everything proper in this case to the extent time and money allowed. Appellant has borrowed the money to fight this matter for so many years - over $13,000. Appellant has exhausted nearly every imaginable avenue of borrowing!

However, for the sake of Appellant's children, wife, livelihood, and for the sake of the great Constitution of the United States this matter must be carried forward! THANK YOU!

STATE OF NEBRASKA)
County of Cuming) ss. AFFIDAVIT OF PROOF OF SERVICE

I, Ken L. Michaelis, appellant herein and acting as my own attorney, pro se, do hereby state under oath that on this date I personally served a copy of this Jurisdictional Statement upon the NEBRASKA STATE BAR ASSOCIATION; c/o Nebraska Attorney General, 2115 State Captiol Building, Lincoln, NE 68509 by U.S. Mail, postage prepaid.

May 12, 1982.

Ken L Michaelis

SUBSCRIBED AND SWORN TO before me this May 12, 1982.

Sharon L. Reeson
Notary Public

My Commission expires April 1, 1984.

GENERAL NOTARY - State of Nebraska
SHARON L. REESON
My Comm. Exp. April 1, 1984

RECEIVED
MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

STATE OF NEBRASKA EX REL. NEBRASKA STATE BAR ASSOCIATION, RELATOR, V. KENNETH LEE MICHAELIS, RESPONDENT.

210 Neb. 545

Filed February 12, 1982. No. 42820.

1. **Attorneys at Law: Disciplinary Proceedings: Proof.** In disciplinary proceedings of members of the bar, the relator must establish the allegations in the formal charges by a clear preponderance of the evidence so the court is satisfied to a reasonable certainty that the charges are true.
2. _____: _____: _____. In disciplinary proceedings the findings must be sustained by a higher degree of proof than that required in civil actions, yet falling short of the proof required to sustain a conviction in a criminal case.
3. _____: _____: _____. In a proceeding for the disbarment of an attorney at law the presumption of innocence applies, and the charge made against him must be established by a clear preponderance of the evidence.

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4. **Attorneys at Law: Disciplinary Proceedings: Appeal and Error.** To determine whether and to what extent discipline should be imposed in a disbarment proceeding, it is necessary for this court to review the evidence de novo, considering the nature of the offense, the need for deterrence of others, maintenance of the reputation of the bar as a whole, protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law.
5. **Attorneys at Law: Disciplinary Proceedings.** An attorney at law may be subjected to disciplinary action for conduct outside the practice of law or the representation of clients.
6. _____: _____. An attorney may be disciplined for criticism in the heat of a political contest if such criticism is carried beyond the limits of truth and fairness.

Original Action. Judgment of disbarment.

Paul L. Douglas, Attorney General, and Mel Kammerlohr for relator.

Kenneth Lee Michaelis, pro se.

Heard before KRIVOSHA, C.J., BOSLAUGH, MCCOWN, CLINTON, BRODKEY, and HASTINGS, JJ.

PER CURIAM.

This is an original disciplinary proceeding brought against the respondent, Kenneth L. Michaelis, an at-

not conflict with Nebraska's right-of-way statutes.

6. Intersection right-of-way is a qualified, not absolute, right to proceed through an intersection, exercising due care, in a lawful manner in preference to another vehicle.

7. An opinion of vehicular speed is proper, provided a sufficient foundation is laid to show the expertise of the witness, as well as specific knowledge of the underlying facts to deal with the question in issue.

8. No exact standard is possible for fixing the qualifications of an expert or skilled witness, and the ruling of a trial judge receiving or excluding an opinion will be reversed on appeal only when a clear abuse of discretion is shown. Herman v. Lee, p. 585.

Statutes
—Political Subdivisions
—Claims

1. A statute is not to be read as if open to construction as a matter of course. Where the words of a statute are plain, direct, and unambiguous, no interpretation is needed to ascertain the meaning. It is not within the province of a court to read a meaning into a statute that is not warranted by the legislative language. Neither is it within the province of a court to read anything plain, direct, and unambiguous out of a statute.

2. When governmental officials, with full knowledge of all the facts pertaining to a claim, allow and pay it, the action is at least presumptively correct and is frequently termed conclusive. County of Douglas v. Board of Regents, p. 596.

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torney admitted to practice in this state by the State of Nebraska ex rel. Nebraska State Bar Association, the relator herein.

Following hearings held before the Committee on Inquiry of the Ninth Judicial District and The Advisory Committee, formal charges were filed against the respondent on November 29, 1978, arising out of his conduct during a 1978 campaign for the office of Cuming County attorney. The formal charges consist of four counts alleging that the respondent had violated the following Canons of Ethics and Disciplinary Rules of the Code of Professional Responsibility: Canon 1, DR 1-102(a)(1), (4), (5), and (6); DR 1-103(a); and Canon 2, DR 2-101(A). Additionally, upon the motion of the relator, four more charges were filed against the respondent relating to statements he made and his

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conduct during the pendency of this disciplinary proceeding. The additional charges allege that the respondent violated Canon 1, DR 1-102(A)(1), (5) and (6), and Canon 8, DR 8-102(B). In each instance it is alleged that the respondent engaged in conduct prejudicial to the administration of justice or in conduct tending to bring reproach, discredit, and disrespect upon himself, the courts, and the legal profession.

The referee appointed by this court held a hearing on the formal charges on June 30, 1980, and a hearing was held on the additional charges filed against respondent on February 24, 1981. The referee filed his report with this court on April 7, 1981, in which report he found that the respondent had violated the aforementioned disciplinary rules as set out in the charges. In his report filed in this matter with this court on April 7, 1981, the referee concludes by stating: "This Referee has been waiting for some evidence of sorrow or regret on the part of the Respondent that would give some assurance that the conduct herein disclosed will not be repeated. There have been no such expressions of regret nor has there

been any retraction by the Respondent of any of the charges he has made. His conduct before this Referee in several hearings has been exemplary and it has been difficult to associate the Resondent before us as the author of the documents received in evidence. This is some basis for hope of reformation. I have in my mind touched upon the thought of recommending outright disbarment but having regard to the short time this Respondent has been engaged in practice, his youth, having regard to the economic stake he has in his period of training and education for a legal career extended over his possible lifetime, and the well being of members of his family, and remembering also that it is not the purpose by this proceeding to punish but rather to reform, I recommend that the Respondent be suspended from practice in this State for a period of one year." Respondent has filed exceptions to the report of the referee and the matter has now been argued before

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this court.

Before discussing the merits of the allegations contained in the charges against the respondent, it will be helpful to set out established standards which govern the review by this court in disciplinary proceedings. We have held that the relator must establish the allegations in the formal charges by a clear preponderance of the evidence, so the court is satisfied to a reasonable certainty that the charges are true. *State ex rel. Nebraska State Bar Assn. v. Hollstein*, 202 Neb. 40, 274 N.W.2d 508 (1979); *State ex rel. Nebraska State Bar Assn. v. Rhodes*, 177 Neb. 650, 131 N.W.2d 118 (1964). The findings must be sustained by a higher degree of proof than that required in civil actions, yet falling short of the proof required to sustain a conviction in a criminal case. *State ex rel. Nebraska State Bar Assn. v. Hollstein, supra; State ex rel. Nebraska State Bar Assn. v. Richards*, 165 Neb. 80, 84 N.W.2d 136 (1957). In a proceeding for the disbarment of an attorney at law the presumption of innocence applies, and the

charge made against him must be established by a clear preponderance of the evidence. *State ex rel. Nebraska State Bar Assn. v. Hollstein, supra; State ex rel. Nebraska State Bar Assn. v. Pinkett,* 157 Neb. 509, 60 N.W.2d 641 (1953). To determine whether and to what extent discipline should be imposed in a disbarment proceeding, it is necessary for this court to review the evidence de novo, considering the nature of the offense, the need for deterrence of others, maintenance of the reputation of the bar as a whole, protection of the public, the attitude of the offender generally, and his present or future fitness to continue in the practice of law. *State ex rel. Nebraska State Bar Assn. v. Erickson,* 204 Neb. 692, 285 N.W.2d 105 (1979); *State ex rel. Nebraska State Bar Assn. v. Cook,* 194 Neb. 364, 232 N.W.2d 120 (1975).

Turning to the formal charges originally filed against the respondent in this matter, the first such charge concerns a political advertisement placed by Michaelis in the Wisner News-Chronicle, a newspaper of general

circulation in Cuming County. It appears from the evidence that Michaelis had been seeking nomination for the position of Cuming County attorney in an effort to unseat the incumbent county attorney. According to respondent, he placed the advertisement of April 13, 1978, with the newspaper for the purpose of announcing his withdrawal from candidacy for the county attorney position. The advertisement consists of four columns of the paper, one continuing onto a second page. Only one sentence in the first column and the last paragraph of the advertisement relate to Michaelis' withdrawal from the county attorney election. The bulk of the advertisement contains allegations of illegal and unethical conduct on the part of the incumbent county attorney and several other named attorneys in the Cuming County area. The article also contains several self-laudatory statements in reference to respondent.

The second formal charge is based upon a one-page document the respondent caused to be released on or about April 11, 1978, and is captioned as a statement to the press. This paper also contains allegations of illegal and unethical conduct on the part of several local attorneys. The statements contained therein cast aspersions by innuendo on the incumbent county attorney and the city attorney of West Point, Nebraska.

The third formal charge relates to a three-page document dated April 25, 1978, and circulated by the respondent. These pages repeat many of the allegations of impropriety alleged by respondent in his other publications.

The fourth formal charge is in regard to a one-page document captioned "Acceptance of Republican Nomination for Cuming County Attorney," and is dated June 5, 1978. This document alleges conspiracy on the part of three Cuming County officials in removing respondent's name from the April primary election ballot.

During the pendency of the investigation of the formal charges, respondent made several additional statements and caused to be filed with the Cuming

County Court certain documents which gave rise to the relator's motion of October 31, 1980, to incorporate additional charges against respondent. The first of these additional charges relates to a statement made by Michaelis to a newspaper reporter on or about October 7, 1980, which subsequently appeared on the front page of the West Point News on October 9, 1980. In the article Michaelis described the disciplinary proceedings brought against him, in part as follows: " 'The Nebraska Supreme Court is scared of this, because they know they have a dirty house, and if you have a dirty house, you don't open the windows . . . . And two attorneys have already committed perjury in this matter.' "

The second additional charge concerns a notice of disallowance of claim which the respondent caused

to be filed in the county court of Cuming County, Nebraska, on September 8, 1980. The document appears to disallow all but $5.78 of a claim filed by a local law firm against the estate of one Herman A. Melcher. The document contains a typed statement prepared by the respondent, which he caused to be signed by the personal representative of the estate. The statement reads in part: "The Melcher family fear that theft by some Cuming County lawyers was imminent if it did not already occur. The family states its full confidence in the first attorney retained [name omitted], Mr. Ken L. Michaelis, and they refuse to allow further theft from this estate by attorneys and their lust and greed."

The third additional charge pertains to a document entitled "Praecipe - Requisition for Transcript," and filed in the county court of Cuming County, Nebraska, on October 23, 1980. This document also contains derogatory claims made against area attorneys on the validity of their claims against the Melcher estate and, generally, upon the integrity of the courts and the judicial system.

The fourth, and last, additional charge filed in this case concerns a statement respondent issued on October 2, 1980, to radio staton WJAG/KEXL of Norfolk, Ne

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braska. The statement, which concerns the disciplinary proceedings filed against respondent, was recorded and broadcast to the public, and was as follows: "Never have I said anyone was guilty of bribery. Never have I done this. This is a blatant and apparent, this is a blatant lie. And apparently is perpetrated by the Nebraska Bar Association using and misusing the press and media. It is a typical smear campaign by what is probably in many people's mind the dirtiest profession in all of America today. Not just today, it was that way yesterday, and the day before that.

"At least prostitutes, and prostitution has a sense of fairness and some decency. The Nebraska State

Bar Association apparently has none.

"Not one of the many false allegations by this very ignorant committee of puppets and professional stooges of the Nebraska Bar Association is true. No one wants to look into the factual truth, for they fear opening a can of worms that finds the West Point City Attorney guilty of gross negligence, reckless and wanten [sic] malice, greed, and gross conflicts of interest for his own personal gain and selfish glory over the past 20-years. His name is [omitted]. Some of the same is true about [name omitted], our former Cuming County Attorney . . . ."

It is clear that the foregoing statements would clearly have a profound effect upon the minds of the reading and listening public, and could only serve to shake the confidence of the public in the legal profession. While the record in this case is voluminous and obviously cannot be quoted in full in this opinion, we have read the entire record and believe that all that is necessary to be discussed at this point is the testimony of the respondent, given under oath, in his original hearing held before the Committee on Inquiry, Ninth Judicial District, on November 14, 1978. We quote pertinent parts of respondent's testimony at that hearing. During his direct testimony, the respondent was asked: "Q Mr. Michaelis, in these various exhibits, you make some

general statements indicating that you have knowledge of unethical conduct on the part of attorneys in Cuming County, and also you make some allegations of what would amount to criminal conduct. Did you have any or do you now have any evidence of any such conduct on the part of any attorneys in Cuming County? A I don't think it could be construed that we made allegations against particular attorneys. . . . Q So all of your statements of that nature were based simply on what other people had said to you, is that right? A What other people had said to me. . . ." He was also asked: "Q Then, for purposes of

clarification, you know of no specific acts on the part of [name omitted] that would be in violation of the Code of Professional Responsibility — A No, no clear ones. No. Q — or the Nebraska statutes? A Or the Nebraska statutes. None that readily come to my mind. Q Another individual who has been mentioned specifically, [name omitted] — do you know of any specific conduct on his part that would be a violation of the Code or of any Nebraska Statutes? A Not clearly; not that I would clearly believe to be in violation. . . . Q Again, you know of no such conduct on the part of [name omitted]? A I'm not very knowledgeable of his affairs. Q You've made several allegations in regard to [name omitted], specific allegations. In connection with the salary increase, you stated, in Exhibit 1, 'smacks as a species of blackmail and bribery'. Do you know of any 'blackmail' or 'bribery' that [name omitted] was involved in? A No."

The respondent also responded to questions put to him at that hearing as follows: "Q Have you, or anyone on your behalf, made any complaints to this committee about unethical conduct of a lawyer in Cuming County or any other county in this district? A No, I have not. Q Did you ever complain to the Counsel for Discipline or any representative of the Bar Association? A No, I have not. Q Didn't you, in some of your correspondence, indicate that your letters to the pastors, with regard to making a donation to their church, was a mistake? A

Was a mistake? Q Yeah. A On my part? Q Yes. A I don't believe. I don't remember. I don't recall."

Finally, the respondent was asked: "Q Mr. Gushard [Counsel for discipline] has asked you about various attorneys. Do you have any evidence of dishonesty or unethical acts on the part of [name omitted]? A Just other than hearsay that mainly [name omitted] had made reference about. Q Other than the attorneys that have been mentioned, do you

have any evidence of dishonesty or unethical conduct on the part of any other attorneys in Cuming County or in this district? A Other than the ones that — Certainly, I have heard of the ones that have been disbarred, as far as that is concerned."

Respondent was also asked with reference to a letter written to St. Joseph's Catholic Church in Wisner, in which letter he stated that if he should become county attorney he planned to divide a portion of the salary to the various parishes. He was asked: "Q Do you see an ethical problem with such an offer as that? A Well, now that it has been brought on up, I do see; but at the time, that's the way one honestly felt, you know. Now, it could be construed as a ethical problem. Q At this time, do you see that it is an ethical problem? A Certainly."

In his report the referee found that the respondent had prepared the above-mentioned materials and that he had placed many of them in the region's newspapers or for broadcast by radio. The referee determined that Michaelis knew that many of the statements were false, deceptive or misleading, or that with ordinary care he should have known them to be false. The referee also found that Michaelis never brought the alleged acts of impropriety to the attention of the proper authorities, but that he consistently used the news media to make public denunciations of certain local attorneys and build up his own image by contrast. The lack of specifics in respondent's allegations, as well as the lack of any reasonable proof of his claims, suggests a malicious motive on the part of respondent, rather than a good faith attempt at fair and candid criticism.

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Neb. Rev. Stat. § 7-105 (Reissue 1977) provides that upon admission to the bar of this state, attorneys assume certain duties as officers of the court. Among the duties imposed upon attorneys is the duty to maintain the respect due to the courts of justice and to other judicial officers. This court has recognized and adopted the principles embodied in

the American Bar Association's Code of Professional Responsibility as a general statement of the standards of professional conduct required of a member of the Nebraska State Bar Association. Canon 1 of the code pertains to maintaining the integrity and competence of the legal profession. DR 1-102, promulgated thereunder, prohibits, among other things, engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation; engaging in conduct prejudicial to the administration of justice; or any other conduct adversely reflecting on the fitness of a lawyer to practice law. DR 1-103 further provides that any lawyer possessing unprivileged information of a violation of the code shall report such knowledge to the proper tribunal or other authority empowered to investigate or act upon the conduct of lawyers and judges.

DR 2-101 also provides that a lawyer shall not prepare, or cause to be prepared, any form of public communication which contains professionally self-laudatory statements. Also pertinent to this matter is Canon 8, which states that a lawyer should assist in improving the legal system. DR 8-102(B) provides that a lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer. The rationale for this disciplinary rule appears in Ethical Consideration 8-6, which provides in pertinent part: "Adjudicatory officials, not being wholly free to defend themselves are entitled to receive the support of the bar against unjust criticism. *While a lawyer as a citizen has a right to criticize such officials publicly, he should be certain of the merit of his complaint, use appropriate language, and avoid petty criticisms,* for unrestrained and intemperate statements tend to lessen public con

fidence in our legal system. *Criticisms motivated by reasons other than a desire to improve the legal system are not justified.*" (Emphasis supplied.)

As a defense to the charges listed above, the re-

spondent makes the following contentions: (1) That the statements attributed to him during the 1978 county attorney election were campaign rhetoric made during the heat and stress of a political campaign; (2) That to bring disciplinary proceedings against him for his expressions is an unconstitutional restraint upon his first amendment right to free speech; (3) That he acted in his capacity as a citizen and not as an attorney of record for a pending trial at the time the statements were made; and (4) That his comments and criticisms in this regard were made in good faith with the purpose of improving the legal system.

The respondent's assertion that he cannot be disciplined for his comments because they were protected expressions under the first amendment is an issue raised for the first time before this court. This issue requires a delicate balancing of the interests in upholding the integrity of our judicial system and in protecting the right of an attorney to free expression. In determining this balance, we will rely primarily upon the case law as formulated by other jurisdictions which have addressed this issue.

The U.S. Supreme Court addressed this issue generally in the case of *In Re Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959). In a five to four decision the Court held that the conduct of Sawyer, an attorney practicing in Hawaii, during a public speech did not impugn upon the integrity of a judge during a current Smith Act trial. The Court found that the lawyer's comments about the "shocking and horrible things that go on at the trial in a Smith Act case" were proper criticism of the law itself and the government's prosecutorial policy, and not personal criticism aimed toward the trial judge. In reviewing the case the Court began its discussion "with the proposition that lawyers

are free to criticize the state of the law." *Id.* at 631. The Court went on to state: "To say that 'the law is a ass, a idiot' is not

to impugn the character of those who must administer it. To say that prosecutors are corrupt is not to impugn the character of judges who might be unaware of it . . . ." *Id.* at 634. The Court also stated that a lawyer can properly criticize a judge's view of the law, as follows: "If [the judge] was said to be wrong on his law, it is no matter; appellate courts and law reviews say that of judges daily, and it impugns no disgrace. Dissenting opinions in our reports are apt to make petitioner's speech look like tame stuff indeed. *Petitioner did not say [the judge] was corrupt or venal or stupid or incompetent.* The public attribution of honest error to the judiciary is no cause for professional discipline in this country." (Emphasis supplied.) *Id.* at 635.

The Court also noted that "surely permissible criticism may as well be made to a lay audience as to a professional . . . ." *Id.* at 632. Finally, the Court noted: "A lawyer does not acquire any license to do these things by not being presently engaged in a case. *They are equally serious whether he currently is engaged in litigation before the judge or not.* We can conceive no ground whereby the pendency of litigation might be thought to make an attorney's out-of-court remarks more censurable, other than that they might tend to obstruct the administration of justice." (Emphasis supplied.) *Id.* at 636.

It is implicit in the statements of the Court as to the boundary of permissible criticism of the law and judiciary that instances can exist where an attorney's criticism or conduct would be impermissible and the subject of professional discipline. We note, as did the Supreme Court of Kentucky in *Kentucky Bar Ass'n v. Heleringer*, 602 S.W.2d 165 (Ky. 1980), and the Iowa Supreme Court in *Matter of Frerichs*, 238 N.W.2d 764 (Iowa 1976), that Justice Stewart was speaking for five members of the court when he stated in his concurring opinion: "If, as suggested by my Brother Frankfurter, there runs through the principal opinion an intimation that a lawyer can in-

voke the constitutional right of free speech to immunize himself from even-handed discipline for proven unethical conduct, it is an intimation in which I do not join. A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.

"*Obedience to ethical precepts may require abstention from what in other circumstances might be constitu*

tionally protected speech." (Emphasis supplied.) 360 U.S. at 646-47.

Generally, the majority of the state courts which have addressed this issue concur that a person does not surrender his freedom of expression upon becoming an attorney. However, most jurisdictions have recognized that upon admission to the bar an attorney incurs the obligation to temper his criticism of the bench and bar in the manner allowed by the canons of professional ethics. As stated by the Kentucky Supreme Court in *Kentucky Bar Ass'n v. Heleringer, supra* at 168: "We are not alone in our opinion that by coming to the bar an attorney incurs the ethical obligation not to bring the bench and bar into disrepute by unfounded public criticism. 'Our system of justice rests upon the mutual regard of the bench and bar.' *Matter of Frerichs,* supra at 766. '[I]n the case of a lawyer an abuse of the right of free speech may be some index of his character or fitness to be a lawyer.' *In Re Lacey,* S.D., 283 N.W.2d 250, 252 (1979), *quoting In Re Gorsuch,* 76 S.D. 191, 75 N.W.2d 644, 57 A.L.R.2d 1355 (1956). 'Nor does free speech give a lawyer the right to openly denigrate the court in the eyes of the public.' *In Re Raggio,* 87 Nev. 369, 371, 487 P.2d 499, 500 (1971). *See also, In Re Glenn,* 256 Iowa 1233, 130 N.W.2d 672, 12 A.L.R.3d 1398 (1964); ABA Code of Professional Responsibility, EC 8-6; Annot., 12 A.L.R.3d 1408; Annot., 56 L.

Ed. 2d 841, 855-69. *But see, Justices of the Appellate Division v. Erdmann*, 33 N.Y.2d 559, 347 N.Y.S.2d 441, 301 N.E.2d 426 (1973); *State Bar v. Semaan*, Tex. Civ. App., 508 S.W.2d 429 (1974); *Polk v. State Bar of Texas*, N.D. Tex., 374 F. Supp. 784 (1974)."

In the case of *Matter of Frerichs, supra* at 769, the Iowa Supreme Court stated: "'A lawyer, acting in a professional capacity, may have some fewer rights of free speech than would a private citizen. As was well explained in *In re Woodward*, 300 S.W.2d 385, 393-394 (Mo. 1957):

'* * * Neither the right of free speech nor the right to

engage in "political" activities can be so construed or extended as to permit any such liberties to a member of the bar; respondent's action was in express and exact contradiction of his duties as a lawyer. A layman may, perhaps, pursue his theories of free speech or political activities until he runs afoul of the penalties of libel or slander, or into some infraction of our statutory law. *A member of the bar can, and will, be stopped at the point where he infringes our Canons of Ethics;* and if he wishes to remain a member of the bar he will conduct himself in accordance therewith. * * *' " (Emphasis supplied.)

In the recent case of *State v. Russell*, 227 Kan. 897, 610 P.2d 1122 (1980), the Kansas Supreme Court determined that an attorney could be disciplined for intentionally publishing known falsehoods while engaged in a campaign for public office. In addressing the first amendment free expression issue, the court stated at 901-02, 610 P.2d 1127: "Respondent notes that little authority can be found on the issue of professional discipline for political rhetoric directly implicating dishonesty under DR 1-102(A)(4). However, extensive treatment is afforded the issues of discipline of attorneys for publications made in the course of political campaigns for the election of judges. See annotations in 57 A.L.R.2d 1362 and 12 A.L.R.3d 1408. *An attorney may be disciplined for*

criticism in the heat of a political contest if such criticism is carried beyond the limits of truth and fairness. In re Charles A. Thatcher, 80 Ohio St. 492, 89 N.E. 39 (1909). Within that context the expression of opinion is protected if true or in good faith believed to be true, but when derogatory factual allegations are false and with ordinary care should have been known to be false, discipline may be imposed. *State, Board of Exam. v. Spriggs,* 61 Wyo. 70, 155 P.2d 285 (1945).

"In *State v. Nelson,* 210 Kan. 637, 640, 504 P.2d 211 (1972), this court stated: 'Concerning respondent's argument that DR 1-102(A)(5) creates an impermissible

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and chilling effect on "First Amendment freedoms," an examination of decisions on the point (12 A.L.R.3d, Anno., p. 1408) reveals the consensus to be that an attorney's right to free speech is tempered by his obligation to both the courts and the bar . . . .'

"In the case of *In re Baker,* 218 Kan. 209, 542 P.2d 701 (1975), a disciplinary proceeding arising out of a political campaign against an incumbent judge, this court held that *a challenger in a partisan election for judicial office is free to criticize an incumbent's record so long as the criticism is accurate.* However, a violation of ethics was found and the challenger was censured for publishing untrue statements concerning eligibility for a disability pension, which statements the challenger knew or could have known were false by reading an applicable state statute.

"Although a lawyer may speak out and state his opinions on current campaign issues without fear of jeopardizing his license to practice law, his First Amendment rights are not absolute. The guarantee of freedom of speech will not protect him from disciplinary action as a lawyer if he is guilty of known falsehood intentionally used and published for the purpose of misleading the voters and gaining personal advantage for himself or his candidate." (Emphasis supplied.)

We determine, as did the referee, that respondent's public attribution of unethical and illegal conduct on the part of the then incumbent Cuming County attorney and other named regional attorneys, charges respondent knew or should have known to be unwarranted, was unethical and unprofessional conduct tending to bring the bench and bar of this state into disrepute and tending to undermine the public confidence in the integrity of the judicial process. If respondent had reason to believe, in good faith, that the named individuals engaged in proscribed conduct, then he had the responsibility and obligation of notifying the office of the Counsel for Discipline of the Nebraska State Bar Association as provided in rule 8(a) of the

rules of this court.

Respondent has suggested that because he was not acting in his capacity as an attorney of record for a pending trial, the Code of Professional Responsibility should not apply to his conduct. We do not agree. This court has stated on several prior occasions that an attorney may be subjected to disciplinary action for conduct outside the practice of law or the representation of clients. *State ex rel. Nebraska State Bar Assn. v. Ledwith*, 197 Neb. 572, 250 N.W.2d 230 (1977); *State ex rel. Nebraska State Bar Assn. v. Bremers*, 200 Neb. 481, 264 N.W.2d 194 (1978); *State ex rel. Nebraska State Bar Association v. Walsh*, 206 Neb. 737, 294 N.W.2d 873 (1980). In this regard, we also note that Formal Opinion 336, Committee on Ethics and Professional Responsibility of the American Bar Association, dated June 3, 1974, holds that a lawyer is bound by the Code of Professional Responsibility in every capacity in which the lawyer acts, whether he is acting as an attorney or not. See, also, *Wright v. State ex rel. State Real Estate Comm.*, 208 Neb. 467, 302 N.W.2d 39 (1981).

We conclude that in the political advertisement dated April 13, 1978, as well as in the subsequent documents dated April 11, 1978, April 25, 1978, and

June 5, 1978, the respondent listed several factual charges of misconduct, illegal acts, and other violations of law by the then incumbent Cuming County attorney, various Cuming County officials, the city attorney of West Point, Nebraska, and several named attorneys practicing in the region which he knew or should have known with ordinary care to be false. Such conduct on the part of respondent was unprofessional and in violation of DR 1-102(A)(1), (4), (5), and (6). The respondent's statements also included several contrasting self-laudatory statements in which he criticized not only particular attorneys but the profession as a whole, and then built up his own image for truth and veracity. These statements, which may have been made for the purpose of attracting voters to his campaign, or,

potentially, clients to his legal practice, were in violation of DR 2-101(A). We would distinguish respondent's statements, however, from the general political rhetoric of election campaigns in that they were not made fairly or accurately upon the facts, and contained false representations. Other statements made by the respondent, while not in good taste, appear to be rhetoric so general in nature and apparently aimed at protesting the state of the law that they cannot be the basis for discipline under the holding of *In re Sawyer*, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959).

We now consider the proper discipline to be imposed upon respondent in this case. Although it is true that the referee in his report recommended that the respondent be suspended from the practice of law in this state for a period of 1 year, he also noted that respondent had not displayed any evidence of remorse or sorrow with regard to his conduct, or any assurances that it would not be repeated in the future. It should be noted that the original proceedings in this matter were commenced in 1978, and this matter is now being adjudicated in 1982, or approxi-

mately 4 years later. Apparently the respondent has failed or refused to profit from past experience and still is convinced that his past conduct was perfectly proper and ethical, and that he should not be penalized for his actions. We note with dismay that on January 14, 1982, after the submission of the case to this court for decision, he filed in the office of the Clerk of the Supreme Court two documents in which he continues to vilify certain attorneys, the bar generally, and the Nebraska Supreme Court. The first document, dated November 8, 1981, is entitled "RE: Attorney General's Office LIES to Nebraska Supreme Court." The document in question is too long to be included in full in this opinion, but we quote from certain pertinent excerpts thereof. In one paragraph he attacks the Attorney General and the assistant attorney general in this case, stating: "[Name omitted] and [name omitted] intentionally, and with criminal

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intent as in Watergate, engaged in a most blatant, easily perceivable, and massive coverup that puts Watergate, Richard Nixon, Abscam, and other government scandals to shame.

"In 1978, 1979, 1980, and 1981, Attorney Michaelis informed these corrupt State lawyers of each of the following." Thereafter, respondent repeats many of the same allegations and charges against various attorneys that were previously the basis of the action. He also alleges that the Nebraska Supreme Court refused to accept copies of his reply brief which we note was tendered in violation of the court rules with reference to its preparation. He also states in his memorandum as follows: "Why worry about organized crime in gambling, slot machines, horse racing, etc. when we have organized crime in the law itself? In the legal profession under the guise of the Nebraska Bar Association!!!"

The second document filed in this court on January 14, 1982, is dated December 15, 1981, and is entitled "NOTICE — CUMING COUNTIANS." After

referring to the Nebraska Supreme Court, respondent states: "Knowing the past and the politics by a few evil, greedy, corrupt and conniving local and regional lawyers, we do not have faith in that Court's ability to be fully honest, intelligent, unbiased, truthful, and competent. The people own that Court — they can dissolve that court!"

While respondent's acts subsequent to submission should not, perhaps, be considered in determining whether he has violated the Canons of Professional Responsibility, particularly DR 8-102(B), we believe it is perfectly proper to consider these subsequent events in determining what sanctions should be applied against him in this matter. Respondent has exhibited no remorse, change in attitude, or desire to cease his scurrilous attacks upon the bar and bench of this state. We are therefore of the opinion that the original recommendation of the referee of suspension is far too lenient and, if applied, would depreciate the seriousness

of his actions. His conduct clearly demonstrates that he is not fit to engage in the practice of law in this state and should be disbarred.

JUDGMENT OF DISBARMENT.

WHITE, J., not participating.

VIRGIE J. HERMAN, APPELLANT, V.
LOIS J. LEE ET AL., APPELLEES.

210 Neb. 563

Filed February 12, 1982. No. 43435.

1. Legislative Power: Highways: Municipal Corporations. The state has inherent power to establish, maintain, and control the highways of the state, including those within corporate limits of municipalities. While the Legislature may properly delegate certain powers over streets, alleys, and highways to a municipality, it retains the power to legislate with reference thereto when a matter of statewide policy and concern are involved.

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

KEN LEE MICHAELIS, Appellant.	Case No. _____
vs.	
NEBRASKA STATE BAR ASSOCIATION, also stated as State of Nebraska Ex Rel. NEBRASKA STATE BAR ASSOCIATION,	NOTICE OF APPEAL FROM NEBRASKA SUPREME COURT DECISION TO THE UNITED STATES SUPREME COURT and/or PETITION FOR WRIT OF CERTIORARI
Appellee/Respondent.	

Comes now Ken Lee Michaelis, also known as Kenneth Lee Michaelis, Respondent in Nebraska Supreme Court Case No. 42820 (Opinion cited as 210 Neb. 545) and does give Notice to you and to the Nebraska Court that Ken Lee Michaelis is hereby appealing the JudgMent of Disbarment as a Nebraska Lawyer stated by the Nebraska Court as being "filed February 12, 1982"; said judgment being appealed to the constitutional and constitutionally endowed Supreme Court of the United States.

This Notice of Appeal includes herein, at the discretion of the United States Supreme Court, a Petition for Writ of Certiorari.

Appellant, under oath, does hereby state as follows:

1. That appellant herein did on March 12, 1982, personally deliver to the Nebraska Attorney General's office and the Nebraska Supreme Court "MOTION FOR AN ORDER TO STAY THE ISSUANCE OF ANY AND ALL MANDATES and/or MOTION FOR AN ORDER TO RECALL AND TO RETRACT ANY AND ALL MANDATES BASED UPON APPEAL AND WRIT TO UNITED STATES SUPREME COURT". (See Exhibit "1", attached).

Appellant received from the Deputy Nebraska Attorney General a Receipt and an acknowledgment of receiving said Motions. Appellant did also execute a Proof of Service. Thereafter, all of these papers and documents were personally filed with the Nebraska Supreme Court on March 12, 1982.

That appellant's mother, Sylvia Michaelis, was dying throughout and did die on March 23, 1982, after an extended and prolonged illness.

That during the period of bereavement, on or about March 30th or April 6th, 1982, the Nebraska Supreme Court sent to appellant a very flimsy and saturated postcard stating that appellant's aforestated Motions were denied or statements comparable in effect!

2. That appellant herein, Ken L. Michaelis, did personally deliver to the Nebraska Attorney General a "Notice of Appeal and Writ of Certiorari to the United States Supreme Court" on March 12, 1982 and thereafter appellant personally filed the Original of said Notice of Appeal and Writ along with the "Notice of Hearing and Proof of Service" with the Nebraska Supreme Court, again on March 12th.

3. That appellant did not receive any proper legal Notice or service, not even a courtesy Notice, from the Nebraska Supreme Court that any Judgment of Disbarment as a Nebraska lawyer occurred on or about February 12, 1982. Not even to this very date!

That on February 12, 1982, the Nebraska Supreme Court caused and did deliberately cause the Nebraska news media, the Associated Press, and the United Press International news services, including statewide television and radio to announce that the Nebraska Supreme Court had disbarred lawyer Ken L. Michaelis for various statements of a political and governmental nature he had made to the press earlier!

The Nebraska Court's biased, intentionally distorted, and wrong statements (Undoubtedly, "intentionally" wrong to gain desired public silence and acquiescence) were blasted throughout the States of Nebraska and Iowa to appellant's personal knowledge. This is how appellant learned of the Nebraska Court's action!

Many Nebraskans and some Iowans saw through this biased attempt to manipulate the news. Many Nebraskans throughout the whole state communicated their strong disgust and anger to the appellant!

4. On said February 12, 1982, appellant travelled the 75 miles from his West Point, Nebraska home with his wife and two sons to Omaha, Nebraska to visit his then dying mother in an Omaha hospital. His mother died March 23, 1982 amidst all of this evil controversy!

In order to find out what was being broadcasted on that February 12th, 1982, a Friday, appellant finally asked for and obtained a copy of the Nebraska Supreme Court opinion from Nebraska's largest daily newspaper, the Omaha World Herald. Said newspaper, through their reporter, was shocked that the Nebraska Supreme Court had not given any proper due legal Notice or any proper courtesy to the appellant.

5. No proper Notice, Service, or Proof of Service upon the Appellant exists for none can exist.

6. That said Nebraska Supreme Court apparently alleges Judgment of Disbarment as a Nebraska lawyer occurred on February 12, 1982 (See 210 Neb. 545).

APPEAL AND PETITION FOR CERTIORARI to the Supreme Court of the United States is hereby taken based upon the following infractions of the Constitution of the United States, the Constitution of the State of Nebraska, and applicable federal statutes:

1. The alleged judgment by the Nebraska Supreme Court is a massive violation of Constitutional due process, both substantive and procedural due process (Fifth and Fourteenth Amendments to U.S. Constitution).

2. The alleged judgment by the Nebraska Supreme Court is a massive violation of Constitutionally guaranteed freedom of speech, freedom of ideas, freedom of press, freedom of personal conscience, freedom of personal decency, and freedom of ethical human rights and basic and fundamental civil liberties! (First, Fifth, and 14th Amendts)

3. The alleged judgment is a massive violation of Constitutionally protected rights to livelihood, property, and means to make a living!

(First, Fifth, Seventh, and 14th Amendments to U.S. Constitution).

4. Massive constitutional violation by the Nebraska Supreme Court of all relevant Constitutional standards dealing with void for vagueness, ambiguity, arbitrariness, caprice, malice, along with a blatant and fraudulent misrepresentation of the controlling United States Supreme Court case: In the Matter of Disciplinary Proceedings Against Harriet Bouslog Sawyer, a lawyer; 360 U.S. 622, 3 L Ed 2d 1473, 79 S Ct 1376, a 1959 case. (First, Fifth, and 14th Amendments to U.S. Constitution);

5. Constitutional conflicts of occupational interests, occupational bias, and sadly occupational coverup and whitewash by the Nebraska Supreme Court. Creating unconstitutional double standards for Nebraska lawyers where total equality is mandatory by the Supreme law of our land, the Constitution of the United States and of the State of Nebraska!

6. Unconstitutional double standards for Nebraska lawyers by pursuing silencing of any and all criticisms about Nebraska lawyers and Nebraska judges but not merely allowing, but even encouraging, false praise and outlandish lies and distortions about Nebraska lawyers, judges, and the Nebraska legal profession. Silencing and persecuting truthful Nebraska lawyers who must, should, and have the duty to our nation, its people, its constitution, its government, and to progress itself to speak one's mind and the facts and the law to the people.

7. Pretensions by the Nebraska Bar Association and the Nebraska Supreme Court to have investigated for the truth in these matters when in total reality neither desires any of the truths to be discovered, determined, proven, or communicated to the public. There were never any investigations to determine the truth - for no desire for the truth about many typical Nebraska lawyers, especially those stated!

8. Unconstitutional shifting of the burdens of proof by pretending no burden of proof existed for the appellees/relators. Occupational

distortions, misrepresentations, and statements made by the Nebraska Bar Association and thereafter by the Nebraska Supreme Court, members of said Bar, made without any basis in law, reason, fact, common sense, or even fiction. (First, Fifth, Seventh, and 14th Amendments).

9. Massive violations of Constitutional First Amendment rights of free speech, free expression, free ideas, free beliefs, and free press and free thinking without in the least any showing of the following:

A. A compelling state interest in behalf of the common welfare and safety of the people.

B. No showing of any clear and present danger - none whatsoever!

C. No showing of any specific falsehoods for none exists. Use of the god-like declarative statement that something is false without any proof or basis in fact or evidence to so state any falsehood.

Nebraska Bar Association and the Nebraska Supreme Court had to create a case to get to the desired result - silence the truth!

D. No showing that something that is definitely false was known by appellant to be false, was important for it not to be false, or that the false statement was said without any regard for its truthfulness or veracity.

10. Violations of the Federal Anti-Trust Acts (Sherman Anti-Trust laws, etc.) and other federal laws dealing with truth in advertising, monopolistic practices, occupational corruption, cartels, feudal practices of false privilege, etc. that stand in direct opposition to all democracies including the American democracy; to-wit; a republic!

KEN LEE MICHAELIS, Appellant.

s/ Ken Michaelis

STATE OF NEBRASKA)
) ss.
County of Cuming)

Ken L. Michaelis, being first duly sworn, does state under oath

that he has read the prior and foregoing Notice, knows the contents thereof and that everything therein stated is the truth as he verily believes and knows to be true.

Ken L Michaelis

AFFIDAVIT OF SERVICE OF DOCUMENT

I, Ken L. Michaelis, appellant and acting as my own attorney, pro se, do hereby state under oath in accordance with Rule 28 that on this date I personally served a signed copy of the aforestated document to all parties required to be served by mailing the same by U.S. mail, Certified and first-class postage prepaid, to-wit:

Nebraska Supreme Court
State Capitol Building
Lincoln, NE 68509

Nebraska Attorney General
2115 State Capitol Building
Lincoln, NE 68509

Dated this 11th day of May, 1982, at West Point, Cuming County, Nebraska.

Ken L Michaelis

The above two signatures of Ken L. Michaelis were subscribed and sworn to before me, a duly authorized Notary Public for this County and State on May 11th, 1982.

GENERAL NOTARY - State of Nebraska
CONNIE J. PFEIFER
My Comm. Exp. April 26, 1986

Connie J. Pfeifer
Notary Public

My commission expires April 26, 1986.

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA - includes the people!

Nebraska State Bar Assoc.,)
RElator,)
vs.)
Ken L. Michaelis, Attorney at Law,)
Respondent.)

Case No. 42820

NOTICE OF APPEAL AND WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT

Comes Now, Ken L. Michaelis, and personally notices to this tribunal that he is presently, along with proper Washington counsel, undertaking an appeal in this matter by Writ of Certiorari and of Appeal to the Supreme Court of this great nation founded and nurtured by Jefferson, Madison, Washington, Lincoln, etc. against petty tyranny.

This constitutes Notice that said matter is presently in direct violation of over forty-six (46) United States Supreme Court decisions and precedents and your tribunal has decided this contrary to the Constitution of the United States as interpreted by the United States Supreme Court and as interpreted by over forty (40) other Supreme Courts of at least forty "enlightened" and matured intellectually and democratically States of this great Union. This is our Appeal and Notice thereof. Prior notice already given!

Ken L. Michaelis, Lawyer for Agriculture, the people, and of and by the people of Nebraska, Respondent;

Ken L Michaelis

Case No. 42820

SAME,)
)
SAME,)
)

MOTION FOR AN ORDER TO STAY THE ISSUANCE OF ANY AND ALL MANDATES and/or MOTION FOR AN ORDER TO RECALL AND TO RETRACT ANY AND ALL MANDATES BASED UPON APPEAL AND WRIT TO UNITED STATES SUPREME COURT

Comes Now Ken L. Michaelis, the people's lawyer herein and throughout, and does hereby state without any equivocation in light of all elements of intellectual law, democracy, and jurisprudence and logic, that many severe federal constitutional questions - the Supreme Law of our Land - exists in this matter that constitute singularly and collectively the very core, foundation, and essence of this great nation's democracy; hence the Constitution of the United States has been massively violated, to-wit:

1) Massive violation of Constitutional due process; both substantive and procedural due process.

2) Massive violation of Constitutionally guaranteed freedom of ideas.

3) Massive violation of Constitutionally guaranteed and protected freedom of speech!

4) Massive violation of Constitutionally guaranteed and protected freedom of press!

5) Massive violation of Constitutionally guaranteed and protected freedom of personal conscience, decency, and ethical human rights and civil liberties!

6) Massive violation of Constitutionally protected freedom of privacy, freedom of personage, and of livelihood and of family rearing and family providings.

7) Massive violation of Constitutionally protected and guaranteed freedom of life, liberty, and the pursuit of decency and happiness.

8) Massive violation of Constitutionally protected and guaranteed rights to livelihood, property, and means to make a living.

Exhibit "1" Pg. 1 of 3

9) Massive and 100% certain violation - CONSTITUTIONAL VIOLATION - of all Constitutional Standards dealing with void for vagueness, ambiguity, Arbitrariness, Caprice, Malice, and Judicial misrepresentation of the Harriet Boslaugh Sawyer U.S. Supreme Court decision of 1959.

10) Massive Constitutional conflicts of occupational interests, occupational bias, occupational coverup, and occupational whitewash - DOUBLE STANDARDS FOR LAWYERS AND JUDGES WHERE TOTAL EQUALITY IS MANDATORY BY THE SUPREME LAW OF OUR LAND!

11) Unconstitutional double standards for lawyers in pursuing an unconstitutional game of intrigue, whitewash, and coverup in silencing truthful lawyers who must, should, and have the duty to our nation, its people, its constitution, its government, and to progress to speak our minds and our facts and law to the people - The truly greatest Supreme Court in a democracy!

12) Massive pretensions to have investigated for the truth - but in reality no truth desired so no investigations and thus the COVERUP AND THE WHITEWASH!

13) Unconstitutional shifting of the burdens of proof by pretending no burden of proof exists. Occupational lies, fraud, distortions, misrepresentations, and statements made without any basis in law, reason, common sense, or fact or even fiction!

14) Massive violations of Constitutional First Amendment rights without the least showing: a. of a compelling state interest in behalf of the common welfare and safety of the people; b. no showing of any clear and present dangers; c. no showing of any specific falsehoods - just the god-like statement something is false by false lying, distortion, fraud, misrepresentation, false labeling, and ABSOLUTELY NO INVESTIGATION TO DETERMINE THE TRUTH! d. No showing that something that is false was known to be false, was important for it not to be false, and that it was said with any regard for its truthfulness or veracity. A COVERUP AND A WHITEWASH BY A VESTED OCCUPATIONAL BIAS.

15) Massive violations of the Sherman Anti-Trust and other federal laws dealing with truth in advertising, occupational corruption, monopolistic laws and false interpretations to protect the occupational bias of judges as lawyers, etc. Massive violations of all Anti-Trust federal laws - a feudalistic cartel without any basis for its existence other than being the occuption of all judges, that is, the legal profession!

Occupational control to silence any and all truths and/or means to obtain the truths about lawyers, judges, and public officials - thus establishing the very government of feudalism that Jefferson and Washington and Adam's Revolutionary War was fought over and about in 1776 to 1781.

RESPONDENT STATES that no service was had upon Respondent concerning any opinion of this tribunal on or about February 12, 1982. Respondent was in Omaha, Douglas County, Nebraska, that date! The Media, AP, UPI, Omaha World Herald, Lincoln Journal, Lincoln Star, etc. were all purposely served with the opinion - an opinion of known gobbledygook by its very own authors!

WHEREFORE, Ken L. Michaelis, lawyer, family man, traditionalists in the law, Jeffersonian, Constitutionalists, and populist of the people, does hereby move that any and all mandates herein be stayed to serve but one cause that to this date has always been trampled upon: TRUTH, KNOWN AND EASILY DETERMINABLE AND PROVEN TRUTH, AND JUSTICE ITSELF! Furthermore, that any other mandates be retracted and/or recalled and dissolved pending the Appeal and writ of certiorari to the great Court founded and created by the even better and greater Constitution of the United States; that is, the United States Supreme Court.

/s/ K L Michaelis, Respondent.

IN THE SUPREME COURT OF THE STATE OF NEBRASKA - hopefully, in a democracy, that is a Court of the mass People!

Nebraska State Bar Associ,	)	Case No. 42820
Relator,	)	
-vs-	)	NOTICE OF HEARING AND PROOF OF SERVICE AS TO ATTACHED MOTIONS/MOTIONS TODAY FILED AND FILED PRIOR.
Ken L. Michaelis,	)	
Respondent,	)	

To: Paul Douglas, politician, Attorney General for Vested-Conflicts of Interests, etc. and his taxpayer paid staff of too-damn many lawyers.

Please take notice that the prior Motions filed or being filed herein by Respondent will be called for hearing before the alleged people's and taxpayer's Supreme Court of the State of Nebraska on the first day of the next regular session of said tribunal on whichever date is applicable and at the time applicable (Which you will know with ten lawyers helping you and the court - but we will not) unless you earlier agree or stipulate to allowing said Motions to be considered as allowed and confessed without the Court having to waste time hearing the same.

Ken L Michaelis

PROOF OF SERVICE

State of Nebraska)
Lancaster County) ss

I, Ken L. Michaelis, one lawyer who can be believed without having to take an oath, being first duly sworn, do depose and state that I personally delivered the Notice of Hearing, Notice of Appeal, & the accompanying Motions for an Order & Stay, etc.
to the Nebraska Attorney General's Office, State Capitol Building, Lincoln, NE 68509.

Dated this March 12, 1982.

Ken L Michaelis

SUBSCRIBED before me this March _____, 1982.

Notary Public/

Exhibit "1" By 3 of 3

81-6710

MAY 13 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

KEN L. MICHAELIS,)
Appellant,)
-vs-)
NEBRASKA STATE BAR ASSOCIATION,)
Appellee.)

Case No. _____

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS
WITH AFFIDAVIT

Comes now Ken L. Michaelis, appellant in this action, and does hereby respectfully request leave of this Court to proceed in this matter of an appeal of appellant's disbarment as a practicing Nebraska lawyer by in forma pauperis.

Appellant states that in no way does appellant want this Motion to hinder in any way appellant's chances of this case being accepted for Writ of Certiorari or for Appeal. Appellant would sooner withdraw this Motion but has no other avenues to financially proceed unless something would be acceptable for and as surety.

Appellant states that as soon as appellant or his wife can obtain further funds, appellant shall proceed in this matter in the normal course to include payment of prior costs.

Appellant's struggles with the Nebraska Bar Association, the appellee herein, have occurred for in excess of four (4) years. This has been very costly in monetary and emotional terms to include the premature birth of appellant's infant son which almost died. Sustaining said infant's life has cost in excess of $17,000.

This whole drama and struggle, conflict, and public controversy herein has been completely at the behest, determination, whim, caprice, motivation, and drive of the appellee or those few lawyers controlling the appellee in this matter.

It is perceived and has been suspected since 1977 when lawyers Pliny Moodie and Robert D. Moodie obstructed appellant's attempts to obtain the proper building permit that the small segment of lawyers involved in the Nebraska State Bar Association that have spearheaded this longstanding campaign against the appellant, to include attempting to have appellant suspended as a lawyer on the grounds of being "mentally ill" without having even a semblance of

proof or evidence to substantiate such a drastic charge, these few lawyers decided already in 1978 they would eventually win this matter because appellant's financial resources were quite limited.

That small group of Nebraska lawyers undoubtedly felt they could exhaust all of Appellant's resources and thus not merely destroy appellant but destroy his livelihood no matter what the merits of the issues herein. Appellant and his wife perceived this tactic of lawyer Moodies already in 1977 and saw it carry over into this matter in 1978 and thereafter continuously!

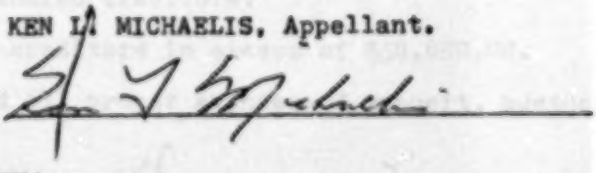
Appellant has not proceeded in this matter or any matter prior in forma pauperis.

Appellant's resources having been depleted, appellant was forced to act pro se as his own lawyer in this disbarment matter and hearing before the Nebraska Supreme Court.

The intrigue by certain few members of the Nebraska Bar Association in these matters are fairly well substantiated since 1978. (Since 1977 as pertains to lawyers Pliny Moodie and Robert D. Moodie). This intrigue has cost appellant and his family dearly.

Appellant has never filed any prior Motion for leave to so proceed in forma pauperis. Appellant has pride, even false pride, in his reluctance to so request. In this instance appellant has little or no choice!

KEN L. MICHAELIS, Appellant.



STATE OF DISTRICT OF COLUMBIA
County of _____

AFFIDAVIT BY APPELLANT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Ken L. Michaelis, appellant in this matter dealing with the disbarment of appellant as a practicing Nebraska lawyer by the Nebraska Supreme Court, do hereby state under oath as follows:

1. Appellant has searched several law libraries these past two days in seeking the applicable Form 4 set forth in the Federal Rules of Appellate Procedure. Appellant could not locate any set of said text. Time did not allow him to contact a federal court!

2. Appellant did borrow from another local lawyer a United States Code Annotated. This affidavit results from said text.

3. Appellant's disbarment as a lawyer by the Nebraska Supreme Court is based entirely upon appellant's use of speech, his beliefs, ideas, and expressions during and after a political campaign.

Appellant strongly believes that the Nebraska Supreme Court has acted arbitrarily, with possible caprice and even malice, in disbarring the appellant. Appellant's disbarment is in violation of Constitutional freedoms of speech, press, free ideas, free thinking, freedom of conscience, and free expression.

4. Appellant's and his wife's financial resources have been totally drained and exhausted by a continuous attack and intrigue by certain Nebraska lawyers who have exploited the appallee over the past four, if not longer, years.

5. Appellant has no present means to support himself, his wife, and his children of very tender years. Appellant has obtained no acceptances of his efforts to obtain any proper employment since the judgment of disbarment was blasted all over the Nebraska media.

Continuous newspaper and media coverage and exploitation by appellee of this controversy with the Nebraska Supreme Court has hampered appellant greatly in his attempts to seek sustenance and a substitute livelihood for his family and wife and himself.

6. Appellant has borrowed upwards of $13,000 already just to fight this continuing, long controversy. Appellant presently owes in excess of $33,000 to unsecured creditors.

Appellant owes secured creditors in excess of $50,000.00.

Appellant has exhausted all proper avenues of support, sustenance, and borrowing.

DATED THIS MAY 13th, 1982. /s/ Ken L. Michaelis

SUBSCRIBED AND SWORN To before me this May 13, 1982.

/s/ Edward A. Fricke

My commission expires Aug 14, 1982.

AFFIDAVITT OF PROOF OF SERVICE

I, Ken L. Michaelis, appellant herein acting pro se, do hereby state under oath that on May 12, 1982, I personally served a copy of this Motion and Affidavit, supra, upon the NEBRASKA STATE BAR ASSOCIATION; c/o Nebraska Attorney General, 2115 State Capitol

Building; Lincoln, NE 68509 by personally mailing the same in the U.S. Mail, postage prepaid, first-class.

Glen T. Mitchell

SUBSCRIBED AND SWORN to before me this May 13, 1982.

Richard K. Fairchild

My Commission expires Aug. 14, 1982.

RECEIVED
SEP - 7 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

KEN LEE MICHAELIS,) No. 81-6710
)
Petitioner,)
)
v.)
) MOTION TO DISMISS
NEBRASKA STATE BAR ASSOCIATION,) OR AFFIRM
)
Respondent.)

COMES NOW the Nebraska State Bar Association, respondent and, as requested by the clerk of this court, respectfully moves the court to dismiss this appeal or affirm the opinion of the Supreme Court of the State of Nebraska for the following reasons:

1. The court should dismiss this action because it rests upon an adequate state ground, that being the authority of the Supreme Court of Nebraska to regulate the practice of law in the State of Nebraska, one of which methods is the adoption and enforcement of the Canons of Ethics as promulgated by the American Bar Association and adopted by the Supreme Court of Nebraska.

2. A further ground for dismissal is that said appeal does not present a substantial federal question and is so unsubstantial as to need no further argument.

3. The record is manifest that the appellant has made public statements, in no way relevant to a political campaign, in public newspapers and radio criticizing the Nebraska Supreme Court and other members of the Nebraska Bar Association in a manner that could do nothing but subject said members of the Nebraska legal profession and the court to public ridicule and contempt. The record shows such attacks were not made through legitimate channels with genuine concern to seek a remedy, a right no one would deny, but instead were made without warning in the public press and radio seriously injurying the objects of his attacks who were deprived of their rights without such basic safeguards as notice, statement of charges or hearing.

For the foregoing reasons, we respectfully contend that a brief reference to the record herein will readily reveal that this appeal is so frivolous and unsubstantial as to need no further argument.

Respectfully submitted,

NEBRASKA STATE BAR ASSOCIATION,
Respondent,

By PAUL L. DOUGLAS
Attorney General

By _____

Melvin Kent Kammerlohr
Assistant Attorney General
2115 State Capitol
Lincoln, NE 68509-4906
Tel: (402) 471-2682

Member of the Supreme Court
of the United States

Attorneys for Respondent.

MKK/cmb/t14

IN THE SUPREME COURT OF THE UNITED STATES

KEN LEE MICHAELIS, Petitioner,	)	No. 81-6710
v.	)	PROOF OF SERVICE
NEBRASKA STATE BAR ASSOCIATION, Respondent.	)	

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

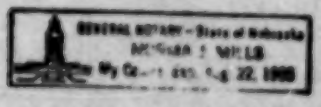
I, David Koukol, being first duly sworn, depose and state that a copy of the Motion to Dismiss or Affirm in the above-entitled case was served upon the petitioner by depositing said copy in the United States Mail, certified and return receipt postage prepaid, addressed to the petitioner, Ken L. Michaelis, Esq., 245 E. Church Street, West Point, Nebraska 68788.

Dated this 2nd day of September, 1982.

David Koukol
Affiant

Subscribed in my presence and sworn to before me this 2 day of September, 1982.

Karen J. Mica
Notary Public



SEP 17 1982
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

KEN L. MICHAELIS,)
Appellant,)
vs.)
NEBRASKA STATE BAR ASSOCIATION,)
Appellee.)

Case No. 81-6710

BRIEF OPPOSING APPELLEE'S MOTION TO DISMISS OR AFFIRM

Comes now Ken L. Michaelis, appellant, and vigorously opposes the Appellee-Respondent's Motion to Dismiss or Affirm for the following reasons:

1. That the appellee Nebraska State Bar Association (NSBA) is totally ignoring and whitewashing the appellee's, NSBA's, useage of such intimidating, drastic, and heinous tactics such as falsely alleging that the appellant was "mentally ill" amidst the 1978 political campaign for Cuming County (Nebraska) Attorney. The Nebraska Supreme Court did the same thing! Absolutely no evidence existed in the least to allege such a drastic charge. Such has been the arbitrary, capricious, and malicious tactics appellant had to confront.

The appellant was and has always been shocked by such undertakings and appellant's consequent needs to defend himself against such evil charges. They control the machinery! Power corrupts!

The Nebraska Supreme Court was utilized already in 1978 to effectuate these tactics and maneuvers employed by a suspected small group of lawyers considered influential in Northeast Nebraska.

That matters of this nature are never inconsequential given the constitutional scheme of our democratic republic.

2. The Constitution was created and nurtured to protect the sovereign citizenry from unscrupulous, arbitrary, capricious, and malbious government action - whether it be carried out by the judicial branch, legislative, or executive. This includes the NSBA!

The Supreme Court of Nebraska and the NSBA cannot be allowed to act arbitrarily, capriciously, or maliciously. The Canons of Ethics exist to protect the sovereign people and citizenry from unscrupulous lawyers - not to protect the lawyers and the courts from the sovereign people and their right to know the happenings and occurrences in their courts, government, and legal profession.

3. The Canons of E[illegible]hics are not to be exploited by the Nebraska Supreme Court in far-fetched interpretations that trample upon the most basic and fundamental constitutional rights and liberties of every

American - including lawyers. The Nebraska Supreme Court cannot act in a vacuum completely contrary to the basic and most fundamental freedoms guaranteed by the Constitution of the United States.

4. Contrary to appellee's contentions, there is never "adequate state ground" to violate the Constitution of the United States. The United States Supreme Court has erected the proper standards and safeguards such as clear and present danger, etc.

The Soviet Union might consider it has adequate "state ground" to silence and quiet Soviet citizens by charging them with being "mentally ill" and other tactics of despotism. This is not Soviet Russia.

5. That the true motives and basis of these actions by appellee against the appellant is apparently the appellant's statement in 1978 that he somewhat agreed with Chief Justice Burger's assessment of the legal profession and the article "Those **!# Lawyers" in the April 10, 1978 edition of Time Magazine.

6. If constitutional freedom of speech, free expression, due process, and free conscience do not present substantial federal questions then, indeed, there are few, if any, federal questions. The Constitution is then a nullity.

7. All the initial statements made by appellant were political statements - most often made to rebut false charges by the opposition. These were matters for the voters of Cuming County to decide - not the NSBA

Appellant was merely defending himself throughout these matters as best he knew how given the tactics, money, and influence and power of the opposition. The so-called "legitimate channels" were the source of the knowingly false charges of "mental illness" and many of the other tactics of harassment and arbitrary and capricious activity.

8. The really horrendous and only "scurrilous attacks" occurred against the appellant at the behest and contrivance of the appellee.

9. The relevant communications by appellant were solicited by the press, media, and several times the radio after the appellee caused press releases to be printed by the media against the name and reputation of the appellant. Appellee prefers to employ the continuing tactics of deception and misrepresentation that have succeedrd so far in causing great harm and injury to the appellant.

In matters of political and governmental concern the public's right to know is always paramount. Mistakes occur but this freedom must not be chilled.

10. The appellee is intentionally deceiving this Court into thinking others have been injured - and unjustly. The only party or person injured has been the appellant, his wife, their three young children, the Constitution of the United States, and the rights of the people. The opposition controlled the media, press, had the power and exploited it by very drastic and malicious tactics. Appellant's greatest error was believing all he had to be was truthful and he would eventually prevail over such intrigue.

11. Appellee desires that this highly esteemed and respected Court accept the "brief reference to the record" as expounded by the appellee and as set forth in the opinion of the Nebraska Supreme Court. Nothing could be much further from the truth!

12. Having arbitrarily controlled and exploited the machinery and tactics employed herein throughout the past four years, the appellee now seeks to "stonewall" this case to prevent the first and only chance for unbiased, objective, and truthful consideration, concern, and review within the context of objectivity, propriety, justice, and the Constitution of the United States.

The failure of this high court to review this matter will work an extreme disservice upon the Constitution of the United States, upon the American legal profession, and upon the sovereign American people and their form of government.

13. The last thing this appellant ever wanted was to be caught in any conflict with the NSBA or to be forced to defend himself. Appellant was given no choice! The various matters throughout the past four years have naturally angered the appellant and caused great despair.

What the appellant stated when he was contacted or forced to defend himself from unfounded, malicious, and arbitrary charges has absolutely no logical relevance with appellant's fitness to practice law.

As a fallible human being, appellant naturally made some mistakes politically and legally in trying to defend himself. Nothing approaches the severity of intentional tactics and wrongdoing undertaken by the appellee and the few Nebraska lawyers who controlled the appellee.

14. The arbitrary and capricious action undertaken by the Nebraska Supreme Court herein was an original action. For an appeal, appellant is completely at the mercy of this Court.

Failure to reverse the Nebraska Supreme Court decision will "chill" the freedom of expression of every lawyer who desires to see good

government and a clean and honest legal profession. Lawyers will fear that they cannot inform the public - the sovereign public - the least about the most severe or even greatly criminal activities by state judges or occupants of the Nebraska Supreme Court. Thus the judiciary arises above the law, above accountability, and gods-unto-themselves. This is how and why the heinous tactic of charging "mental illness" without any basis other than arbitrary and capricious despotism was allowed to occur in this matter.

15. The sovereign people of Nebraska are forced to pay all the costs and expenditures of the state courts but, without proper avenues for knowledge about the judges and courts, the sovereign people can exert absolutely no control, impact, or even concern about their courts.

The tactic of the Nebraska Supreme Court is that of making itself and the judges "above the law" and beyond accountability to the public. This is unconstitutional privilege, caste, and immunity which the United States Supreme Court has oftened denied for itself.

16. The United States Supreme Court has said the case best to reverse the Nebraska Supreme Court's opinion herein. Appellant cited forty-four (44) U.S. Supreme Court cases in his brief submitted to the Nebraska Supreme Court. Appellee cited none to substantiate appellee's position - for none are to be found!

In its opinion of February 12, 1982, the Nebraska Supreme Court quoted matters totally out-of-context, arbitrarily and capriciously selected and stated matters to substantiate and justify the Nebraska Court's predetermined desire to have revenge upon the appellant. The Nebraska Supreme Court arbitrarily ignored each and every one of the 44 U.S. Supreme Court cases and the constitutional logic and precedents set forth by the U.S. Supreme Court.

17. The attitude, motivations, and pervasiveness of the appellee and of the Nebraska Supreme Court is reflected in the Transcript's quotation of Mr. Melvin Kammerlohr (Deputy Nebraska Attorney General):

> "As far as I'm concerned, the truthfulness is pretty much irrelevant. But, it kind of worries me that you (Michaelis) think that just because something is true, that you can publish it." (Transcript of June 30, 1980 Hearing; page 206-207).

This reflects the arrogance, capriciousness, and arbitrariness of the opposition.

18. Due to the dying and death of appellant's mother on March 23, 1982, and the consequent depths of his despair and remorse, appellant's

Jurisdictional Statement filed in this Court on May 13, 1982, was performed in extreme haste and under the duress of great despair, remorse, depression, and anger consequent to his mother's death under such trying circumstances.

Appellant has never prior as much as ever appealed a matter to even the Nebraska Supreme Court. The Jurisdictional Statement was hastily done by appellant typing night and day without little rest as the deadline fastly approached. Amidst the despair appellant forced himself to continue.

Said Jurisdictional Statement was not at that time edited or proof read. Appellant apologizes for the poor drafting, mistakes, various poor and undiplomatic word useages and phrases.

19. Contrary to the appellee's attempts to mislead this Court, all of the major happenings herein occurred during and were part of a political campaign and its aftermath. The opposition lawyers did illegally and unconstitutionally (See Brown v. Hartlage, U.S. Supreme Court No. 80-1285, 50 Law Week 4359, decided by a unanimous Supreme Court April 5, 1982) remove appellant's name from the 1978 Primary Election and the Election Ballot. This commenced the whole matter.

Perceiving that the political activities of the opposition were unconstitutional, appellant spoke out to so inform the sovereign people. The electors had a right to know what was occurring and the appellant had a constitutional duty to inform the electorate. In retaliation for the appellant undertaking this duty to the electorate, the appellee has engaged in this reign of despotic arbitrariness, caprice, and malice. Regretfully, once a transgression occurred against the appellant, the opposition wanted him silenced. That is why this matter has mushroomed. The opposition has some "sacred cows"! This is wholly contrary to the Constitution of the United States.

20. The appellee, through the Committee on Inquiry, arbitrarily demanded that the appellant tell them any and everything appellant knew concerning other lawyers and their misdeeds. Appellant refused unless the same demand was made upon all licensed Nebraska lawyers.

The committee insisted. Coercion and intimidation were used. Appellant knew they would destroy him if he refused further. Appellant finally succumbed to their demands. This is the basis then used by the committee and the Nebraska Supreme Court to attack the appellant -

stating the appellant made "scurrilous attacks" upon the bar and bench. They forced the appellant to state matters and then arbitrarily, without any investigation, proclaim it to be false and then attack the appellant for stating falsehoods. This is very despotic, reprehensible, and unconstitutional. The NSBA cannot be allowed to police itself.

Appellant was forced, intimidated, and coerced into stating what the then Mayor of West Point, Nebraska and several former school board members had told appellant about the conflicts of interest and apparent corruption by the Moodie law firm as City Attorney and School Board Attorney for acts in 1961, 1962, and 1970 to 1972 (Periods prior to appellant even being a lawyer). The appellee and the Nebraska Supreme Court arbitrarily declared and god-like decreed that these were false statements without having any basis whatsoever to come to such a conclusion other than an attempt to coverup or whitewash the truth.

These coerced statements were then used to attack the appellant. One thing for certain, the public of West Point and Cuming County had the right to know and judge the truth. Many already did know and suspected Moodies of having often self-served themselves in government. The Moodie-controlled local press has never allowed a bit of this to be aired publically even to this date.

21. That the appellee, NSBA, with the concurrence of the Nebraska Supreme Court have refused all of appellants numerous Motions to make the charges over the years against the appellant far more definite and certain; to include pointing out what are the specific falsehoods appellant is alleged to have uttered. The NSBA and Nebraska Supreme Court refused these very legitimate requests. They knew appellant could never defend himself against such general and broad charges as the appellee arbitrarily chose to pursue and fabricated.

The closest to any certainty has been the many falsehoods stated in the February 12, 1982 opinion of the Nebraska Supreme Court. Now the appellee is content that they have gotten away with this travesty of justice and due process. To them, the truth means nothing!

By imperial and god-like decree the appellee and the Nebraska Supreme Court have stated some unknown something is false without stating what exactly is the alleged falsehood for identity purposes. Not a scintilla of proof or testimony exists that this unknown is false. It is false merely because they say it is false. This is arbitrary, capricious, and despotic government.

22. The wholly one-sided, intimidating, and coercive intrigues by the Committee on Inquiry for the 9th Judicial District were discredited from the outset. They were Star Chamber proceedings much in the vogue of Gestapo Hearings and KGB inquisitions; to-wit; the "mental illness" and other comparable gimmicks.

23. The appellant has undertaken many readings of the documents mentioned in the Nebraska Supreme Court opinion. Appellant has tried to be very objective. In no way can appellant agree with the subjective, arbitrary, and capricious attitude exhibited in the opinion. Numerous intentional misrepresentations exist inorder to achieve the court's predetermined objectives. For example, no where does any document allege "conspiracy on the part of three Cuming County officials".

24. Appellant has uttered nothing that he knew to be false or that he should have known to be false. This is a fabricated charge just as the charge of "mental illness" was totally fabricated by the same sources for political and occupational gains contrary to the democratic guarantees of the Constitution of the United States.

Appellant has never even hinted at certain defenses such as "campaign rhetoric" which the Nebraska Supreme Court inaccurately or falsely alleges and states that the appellant utilized as a defense. Many other inaccuracies exist in the February 12, 1982 opinion of the Nebraska Supreme Court.

For the foregoing reasons, especially to uphold and to defend the Constitution of the United States, appellant respectfully requests that this Court overrule the appellee's Motion and that this Court grant the review and appeal so desperately necessary for proper Constitutional due process and Constitutional freedom of expression, conscience, and speech.

Respectfully submitted,

KEN L. MICHAELIS, Appellant.

Ken L Michaelis

220 S. Colfax Street; West Point, NE 68788 Tel: (402) 372-5614

STATE OF NEBRASKA)
County of Cuming) ss.

AFFIDAVIT OF PROOF OF SERVICE

I, Ken L. Michaelis, appellant herein, being first duly sworn, do hereby state under oath that on this date I served a copy of this Brief upon the appellee by depositing said copy in the United States Mail, postage prepaid, addressed to Melvin Kent Kammerlohr, Assistant